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# Report of The Trials of Certain Individuals, on Charges of Riot, Manslaughter & Murder, at Ederney & Innishmore, in The County of Fermanagh

Justice Moore







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Charges of Riot, Manslaughter & Murder, at  
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Justice Moore

*Report of The Trials of Certain Individuals, on Charges of Riot, Manslaughter & Murder, at  
Ederney & Innishmore, in The County of Fermanagh*

Trial of The Ederney Rioters - 1824

Justice Moore, Randall Kernan

HAR01650

Court Record

Harvard Law School Library

Dublin: Printed by T. Reilly, 17, St. Andrew-Street, c.1824



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# REPORT

OF

## THE TRIALS

OF CERTAIN INDIVIDUALS, ON CHARGES OF

*Riot, Manslaughter & Murder,*

AT

EDERNEY & INNISHMORE,

IN THE COUNTY OF FERMANAGH;

TRIED BEFORE THE

**Hon. Mr. Justice MOORE,**

*At ENNISKILLEN, on the 6th August, 1824, and at the Adjourned  
Assizes, commencing on the 26th of same Month.*

By RANDALL KERNAN, Esq. Barrister at Law.

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PUBLISHED IN OBEDIENCE TO A RESOLUTION OF

THE CATHOLIC ASSOCIATION.

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Rec May 15, 900



TO THE

*Catholic Association*

OF

**IRELAND.**

GENTLEMEN,

Pursuant to a Resolution passed by the Finance Committee, I have the honor to submit to you a full and impartial Report of the Trials of certain Parties engaged in Riots in the County of Fermanagh. This Report has been drawn up by a Member of your Body, and a Barrister, engaged in those Trials, Mr. RANDALL KERNAN. With respect to the trust-worthiness and ability of the Gentleman, it is not necessary for me to speak. He is known to most of you as an honest and zealous advocate for the poor and oppressed Catholics, in whose defence he has had too many opportunities of exerting his talents.

As to the cases in question, the Finance Committee deemed it important to put the circumstances of these Trials on a record less perishable than that to which such Trials have hitherto been committed—namely as those circumstances disclose certain facts regarding the state of parties, and the mode of administering justice in some parts of the North of Ireland. They were of opinion, that it was of material consequence that the Imperial Parliament and the British Public should be made ac-

acquainted with the ramifications of that system, under which this Country, and particularly the Catholics of Ulster, suffer so severely. The Report of the Trial, now laid before you, will prove the truth of those declarations so frequently made in the Association, and so incessantly repeated in the Public Prints, namely—that even under the control and authority of the most upright Judge, a Catholic has little or no chance of justice in party disputes. It cannot be otherwise, when the *materiel* of the Jury is considered, and the constant practices of the Returning Officers brought into view.

These Trials are presented to you as a fair specimen of the workings of the system, and it is hoped, that the detail they contain, will prove beneficial to the Country.

F. W. CONWAY,

Assistant Secretary to the Catholic Association.



# REPORT, &c.

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## ENNISKILLEN ASSIZES.

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THURSDAY, AUGUST 5, 1821.

ABOUT three o'clock the Hon Justice MOORE opened the Commission. The appearance of Gentlemen competent to compose the Grand Inquest of the County, was numerous and highly respectable. The following answered to their names on being called.—

GENERAL ARCHDALL, M P, FOREMAN.

LORD VISCOUNT CORRY, M P  
HON JOHN CREIGHTON,  
SIR HENRY BROOKE, Bart  
GORGES MARCUS IRVINE,  
JOHN MADDEN,  
JOHN ARMSTRONG,  
EDWARD ARCHDALL,  
WILLIAM D'ARCY IRVINE,  
JOHN C BLOOMFIELD,  
WILLIAM BARTON,  
CHARLES D MADDEN,

JOHN BRIEN,  
GEORGE LENDRUM,  
JAMES DENHAM  
HAMILTON IRVINE,  
WILLIAM TENNENT,  
RICHARD DANE,  
JOSEPH MAGUIRE,  
ANDREW NIXON,  
JAMES A AUCHINLECK,  
CONSTANTINE MAGUIRE, and  
GEORGE KNIFE, Esquires

After the Grand Jury had been sworn, Mr. Justice MOORE addressed them at some length. He expressed the happiness he felt in observing so respectable and full an attendance of the Grand Jurors, particularly on the present occasion. Transactions, he said, of so violent a character, as had recently taken place, in this County, demanded the fullest and most serious investigation—they ought to be carefully scrutinized their causes investigated, and proper remedies applied to *repress the spirit in which they originated*. From what cause they arose, it was not for him to know, nor could it be conceived

that he should have any knowledge of it, but it was for them, as the Grand Inquest, to inquire and search out \* He was not to presume any thing, but that fatal occurrences had taken place, and that the sacrifice of human life had been the consequence, was acknowledged and notorious. These occurrences required then deep and serious investigation. He was not to know from what principles, or from what prejudices they arose—with them he meddled not, we, said his Lordship, are called upon to put the laws in force against all men who trespass against them, and you, Gentlemen, I am persuaded, will discharge your duty honestly and conscientiously. The country expect it, and it must be shown that the laws shall be obeyed. It must be shown that it is not for *ordinary persons* to legislate, no matter to what faction or party they belong, *they must not presume to legislate*, they must be taught that the laws are above all, *and must be obeyed by all*. That these offences have resulted from causes of no common character was obvious. Here there were no burglaries, no highway robberies, no burnings, nor any of the ordinary crimes that occur in society, and yet the Calendar was stained with crimes of a sanguinary nature, and with more sacrifice of human life than appeared in those distant parts where disturbances had lately reigned. To him (the Learned Judge) the cause was discoverable, but it was for the Grand Jury to find it out, and it was for them, by their example, by their exertions as Magistrates, and by their influence as Gentlemen of property in the county, to check it before the evil spread to a greater extent. It was strange, and he was at a loss to account for it, that the Calendar of this county was so marked with blood, and was the heaviest on the Circuit. He regretted that the fine County of Fermanagh, heretofore so remarkable for loyalty, for virtue, for morality, for religion, and for the peaceable character of its inhabitants, should present so tremendous a Calendar, a Calendar marked with accusation of the deepest dye, and yet not containing a single crime of burglary, arson, or almost any of the other ordinary offences. This state of things he considered quite an anomaly, for should he (the Learned Judge) require a place to fix his residence, he knew of none so likely to be the object of his choice as the celebrated County of Fermanagh. He trusted, then, that the present disordered state of society here would

\* A few days before the Assizes, on Sunday evening the 26th July, a young man of the name of Constantine Martin, when returning from a *patron*, held on that day, at the Parish Chapel of Kinnawly, in this County, was murdered by a Party that had lain in wait for him, to whom it is not pretended, he had ever given the least provocation. He was a Catholic. Some persons were committed on suspicion. The principals, after remaining in the County to the eve of the Assizes, escaped. It is presumed that the Learned Judge alluded to this murder, which appeared on the Calendar, as well as to the homicides committed at Ederney and Innishmore.



occupy the serious consideration of the Grand Jury—that they would impartially and zealously search out and eradicate the causes of the evil—that they would repress the spirit of turbulence and annoyance, and restore the County to its former distinguished character.

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## EDERNEY RIOTS.

SATURDAY, AUGUST 7, 1824.

The King, at the Prosecution of William Ingram, David Ingram, and others, against James M'Hugh, Thomas Scallen, James Keon, John Muldoon, Pat M'Donagh, John M'Golrick, William M'Laughlin, T Corrigan, Michael Cullion, Henry Burns, Bryan M'Barron, Pat. Kiernan, Owen M'Donagh, Thomas Lurkin, and Edward Dolan.

The Prisoners were indicted, for the murder of *Robert Ingram*, at Ederney, in the County of Fermanagh, on the 1st day of March, 1824.

It was arranged between the Counsel on both sides, (the Prisoners having refused to join in their challenges), that they should be allowed to make forty peremptory challenges. After exhausting the number of their challenges, and having set aside several for cause, they were given in charge to the following Jury:—

### NAMES OF THE JURORS

THOMAS BAILEY, Esq	ROBERT GUINNESS,
JAMES ARMSTRONG,	ARCHIBALD ARMSTRONG,
CHRISTOPHER HUMPHREYS,	JOSEPH WALSH,
EDWARD ARMSTRONG,	JOHN CRAWFORD,
WILLIAM JOHNSTON,	ROBERT GRAHAM,
THOMAS HUMPHREYS,	THOMAS SCARLETT †

### EVIDENCE ON PART OF THE PROSECUTION.

*James Johnston, examined by Mr. R. Johnston.*

Witness said he was at the fair of Ederney in the month of March last, he went into the town about eleven o'clock in

† It is observable, that there was not a Roman Catholic Freeholder empanelled as a Juror, either on these Trials, or on the Trials of the Innishmore Case, at the General Assizes, held on the 6th of August, or at the adjournment of the Assizes, held on the 26th. This has been the practice of Sub-Sheriffs in the County Fermanagh for more than a century. How long so degrading a distinction shall continue it will be for the Legislature to determine.

the morning, and remained there till about five o'clock in the evening, he saw some disturbances in the fan at about eleven o'clock

Here Major General ARCHDALL, the foreman of the Grand Jury, came into Court, and made the following observations to the Judge

My Lord.—It has appeared to me and to my fellow Jurors, by private evidence, that the names of two or three persons that have been sworn against, and who appear to me more deeply involved in the murder committed in the riots at Inishmore than those persons against whom we have found bills, have not as yet been sent up to us. We have not as yet received any indictments against those persons, and the reason of this extraordinary omission, as I am informed, is, that the Crown Solicitor had received instructions from the Attorney General, not to prosecute those persons

SIR JAMES GALBRAITH —My Lord, it may be possible that the Foreman of the Grand Jury has received such information, I do not know any thing to the contrary, no one can know what passes in the Grand Jury room but the Jurors, but, my Lord, of this I am quite certain, that I never received any such instructions from his Majesty's Attorney General, on the contrary, my Lord, I am well aware, that at this present moment, indictments are framing against the very persons to whom General Archdall alludes.

Several of the Counsel for the Crown rose at the same time to reply to the General.

Mr SCHOLLS —My Lord, I am the Counsel generally selected to prepare the indictments in such cases as the Crown prosecutes on this Circuit, and I beg leave to assure your Lordship, and the Foreman and Gentlemen of the Grand Jury, that I inserted the names of every individual in the indictment, against whom copies of information were laid before me, without making any such omission as the General alludes to, and I am quite certain that no such instructions as those stated by the Foreman, were ever given by the Attorney General to the Crown Solicitor

Mr JOHNSON.—My Lord, I beg leave to suggest that the course adopted has been a very improper one. I shall not interfere with the Crown Solicitor. I have no right to select prosecutions.

General ARCHDALL —One of those persons against whom the strongest proof is given, is of the name of Breslin

Judge MOORE.—General, I must interrupt you. It is very irregular to mention either the names of the persons accused, or the evidence you have received against them, this would be to divulge the secrets of your fellow Jurors, as well as those of the Crown. You are the persons to investigate the charges that come before you, but you are not to select

the persons for prosecution. If any omission or mistake has taken place, the Crown Solicitor, who has given a very satisfactory answer to the complaint, will give you any further explanation you require. I shall not, Sir, direct bills of indictment to be found against any person.

General ARCHDALL and the Crown Solicitor retired.

Mr. ROLLESTON — If the Crown Solicitor be permitted to give explanations and instructions to the Grand Jury, I think the Prisoners when they come to be tried, will have a good challenge to the array. This is the most extraordinary application I ever recollect to have heard made.

The Judge ordered the Crown Solicitor to attend in Court, and Mr. Johnston resumed the examination of the first Witness.

Witness said he could not describe the nature of the riots. He saw them in a riotous manner running through each other. There were great numbers assembled, they were not armed, they had cudgels, one party was running after a man, he (Witness) supposed, with intention to beat him, he saw no stones thrown, nor any houses attacked.

Counsel for the Prisoners did not cross examine this Witness.

*Samuel Johnston examined by Mr. Rolleston*

Witness said he was in the fair of Ederney in the month of March last, he went there about nine o'clock in the morning. The first riot commenced between ten and eleven o'clock, he saw a person of the name of Johnston beaten by ten or eleven persons in the town land of Ederney, nearly adjoining the town of Ederney. He saw the same persons returning into the town, and saw some of them throwing stones into Tiernan's house. Tiernan keeps an inn in Ederney. He saw about one hundred persons round the house rioting, the Prisoners, Owen and Patt M'Donagh, were among the party. — (Identified them.) The party made a great noise, which he could not describe, they were vapouring their cudgels round their heads. He saw other persons rioting in a place called Rakore or Cahere, they were beating Johnston, there were about two hundred of them. Johnston made his escape into a friend's house, he saw no person wounded.

*Cross-examined by Mr. Macklin.*

Witness said he had no arms when he first went to the fair but he had arms afterwards. When Tiernan's house was attacked, it was about five o'clock in the evening, he then joined the persons called the *Guard*, they were not commanded by any officer, or by any non-commissioned officer. The persons then with Witness were James Philips, William Cooper, Robert Ingram the deceased, David Ingram his



brother, and Arthur Johnston, their numbers amounted to about twelve or thirteen persons, he does not recollect the names of the rest, he got the gun at the end of Henry Tiernan's house or between that and Priest M'Mahon's, he got the gun from James Philips, who had been in the street with it, it had a bayonet on it. He then proceeded up the street, and called out for a Rebel or a Ribbonman; he thought from the treatment the Protestants had received, it was right to put them down, he had not been struck by any person at this time, he had an old grudge to them, he thought some measures should be resorted to to prevent those persons rioting in Ederney, he considered from their proceedings there, that it was more a mart for assassination than for commerce, he did not think it necessary to go to a Magistrate to preserve the peace, nor did he consult any one whether he should bring a gun to the fair. He and others signed a memorial to the Grand Jury to have the Police established in Ederney, to keep the peace there, the memorial was prepared after the 19th of July last, but he cannot say it was presented, the Grand Jury gave no answer, and they consulted no one else. The Gentlemen did not look to Ederney, he heard a shot fired, it apprised him, it was between four and five o'clock, when it was fired by David Ingram, the brother to the deceased, he did not consider it a signal shot. When he looked from a window he saw a man throwing stones at Tiernan's house, the stones were thrown after the shot was fired, but when he saw the stones thrown, he said he would go and protect Tiernan's house. He then passed through to the rere, and got the gun from Philips. Persons of the name of Hugh Brandon and Henry Brandon remained with him in the house, on the loft, they were about half an hour there. One of those persons brought him into the house and told him, if he remained on the street, he would be murdered. There was no quarrelling in the street at that time. The Prisoners, Owen and Patt M'Donagh were then in the street. He told one of them, Owen, he would stab him, if he did not stand off. On going up the street, he met M'Donagh as he met any other man, but he, (Witness) thought Owen M'Donagh seemed willing to go forward towards him, and he told him "to stand off, or he would stab him." M'Donagh had neither gun nor bayonet, but he had a stick in his hand. The Guard were then a few yards distant when he met M'Donagh. Witness was not at the meeting of the Guard previous to the fair, he was not apprised of the Guard meeting till he heard the shot. He thought the shot was rather an unusual thing in a fair, and he went to see what was the cause of it. He did not know by whom the gun was charged. He understood the Guard was battered into the house by the Mob,

but he did not see the Guard attacked. When he went out he found the Guard on the street with guns and bayonets. The prisoner, M'Donagh, had done nothing to him when he bid him, (M'Donagh) "stand off," but he thought he should not come forward there on such an occasion. M'Donagh was standing still, and Witness believed he said to him, "Johnston you know me, and sure you would not stab me." He was in different parts of the fair between the Horse Market and the Tavern from ten in the morning to four or five in the evening. His business to the fair was to sell a horse, and to buy pigs. He sold the horse; he joined the Guard between four and five o'clock, and not before. Robert Ingram, the deceased, and William Ingram, were on the Guard. None of the Guard were in the house with him when he left it. Previous to the time he called for "a Rebel or a Ribbonman," there had been rioting, but he could not say that any of the Prisoners were concerned in the riot.

*William Ingram, examined by Mr. Boyd.*

Witness said he was brother to the deceased, Robert Ingram, he was in Ederney on the day of the riot, he went to the fair to buy yarn and sell a heifer, he saw rioting in the street, and about half past three o'clock a person was beaten into Tiernan's house, Witness then went into the house and found his brother Robert there and several others, the windows of the house were broken in with stones thrown at the door, he saw no person in the house struck with the stones, shortly after he saw his brother Robert bleeding from his head, but Witness did not then examine the wound, this happened on Monday evening, the first of March, and the deceased lived to one o'clock on the Wednesday following, his brother was in good health before that day (the fair day), a person of the name of Francis Daly, who was not then on his trial, was there, but he knew no other person that was in the riot, a Guard had then arrived there, for their own protection and that of others, at the time the Guard arrived at Tiernan's there was rioting in the street, and some persons beating others; he saw the persons at the door beating the people for a great distance, he knew a man of the name of Knox that had been beaten.

*Cross-examined by Mr. Dogherty.*

Witness went to the fair about six o'clock in the morning, he had no arms then, there were two riots, the first was over before four o'clock. He had no arms given to him at three; but about four o'clock he was armed with a gun and bayonet, he lives in Devenny, about a mile from Ederney, his gun was at home, and he sent his son James for it, he charged his gun

in the Fort at Drumkeen, he went there for the purpose of meeting those that were coming there, he desired his son, the boy, to bring ammunition, his son brought three balls and three charges of powder, he went to Drumkeen where he arranged to meet the boys, and saw others there, among whom were his brother David Ingram, James Philips, and the two Coopers. There were then six or seven guns there, he saw a boy of the name of Elliot there, he did not think Elliot had a gun, there were also two boys of the name of Morrisson there. Those boys might have had guns, but Witness cannot say whether they had or not. He saw Johnston Camble there, he had a gun, Witness also saw James Connolly, he had a gun; he did not think that persons of the name of Nedderry were there, but he cannot be positive, he is certain his brother Robert, the deceased, was not there at that time. He did not see him have a gun there, but he heard he had a fowling-piece which he had taken from one of the boys, but he, the Witness, did not see him take it. There was no commanding officer there, no headsman. Drumkeen was a good distance from Ederney, Witness marched with the other persons from Drumkeen to the fair, about an hour and a half after the first riot was over. They went down the street of Ederney, he saw no riot among the people then, Witness and his party gave the crowd no reason to run. They went then to Henry Tiernan's house, it was a crowded fair. He had no intention of molesting any person, he knows Samuel Johnston the last Witness, Johnston joined Witness and his party in the under end of the town after Witness was beaten into Tiernan's house. He heard it was David Ingram that fired the first shot. He did not see him fire it. David was one of those he met at Drumkeen, he did not see David prime and load his gun there, but the town was quiet when Witness and his party returned into it with arms. When they went down to Tiernan's house, he saw rioting, he and his party did not assault any one, no party had guns there but themselves, he heard no one of his party call out for Rebels or Ribbonmen, he did not hear those words, "Here are the Coopers of Edinclough;" he has no recollection of hearing any such words. Witness and his party had no Constable with them, they were asked by persons what authority they had for carrying arms through the fair? He did not hear this expression, "here is my gun, that is my authority," Witness did not hear what answer was given. Witness saw his brother Robert, the deceased, on the Tuesday after the fair, carrying turf in a creel, from the bog, Witness's business in the fair was over before three o'clock, he dare not go home when his business was over, but he went from the fair to Drumkeen by a backward bye-road, Drumkeen was



not his straight way home, but he might have gone home that way he knew his brother, the deceased, was behind at Ederney. Witness was in Tiernan's house early on that day; James Cooper and Arthur Johnston were with them there; David Ingram was not, they had no consultation there, they met there to go home together. Witness was afraid to go home, the reason he and the party were afraid to go home was because he was beaten there in the year 1815. It was agreed at Tiernan's house, that they should meet at Drumkeen, he sent his son home for assistance.

*Witness re-examined by Mr. Boyd.*

Witness said, that he and his party were obliged to go down street from Drumkeen to Tiernan's house.

*Witness examined by the Foreman of the Jury.*

He said he did not know, he had not heard for what purpose his brother fired the shot, he went from Drumkeen to Ederney to protect his Wife and Daughter that were there in Tiernan's house, his brother Robert, the deceased, was not struck with the slane till after the party came with the arms to Tiernan's house.

*Robert Maxwell examined by Mr. Deering.*

Witness said he was at the fair of Ederney, in March last; he went there after breakfast, and remained till sunset, he saw crowds of persons assembled at different times, in different places, they appeared to be the same party going backwards and forwards, they had no weapons but sticks, the rioting continued for a long time; till towards evening. He saw a person of the name of James Connolly struck at about the hour of twelve or one o'clock, he did not see any arms until the Guard came, the Guard went down to an open space below Henry Tiernan's house, they turned up to it and were followed by the Mob "daming them," and asking, "where were they going with their arms." At that time the Guard were not molesting any one. The Guard went then to Tiernan's house, and stopped there. The Mob faced them with sticks and stones, and were told several times to keep back. Witness saw sticks and stones going together, he was not there at the beginning, he saw stones thrown through the windows of Tiernan's house. The Mob were striking at the Guard that were going back, they stood as long as they could, and then retreated. The Guard still desiring them to keep back. Witness, on going into Tiernan's house, saw Robert Ingram, the deceased, standing at the door. He, (the deceased,) was forced back into the house. In about three minutes after, Witness saw him bleeding. He saw James

M'Hugh at the jamb of the door, with a stone in each hand, under the skirt of his coat, Witness heard him say to the deceased, "Bob, do not shoot us," the deceased had a gun in his hand at the time, but he, (Witness,) had neither a gun, a stick, nor a stone. The shot was fired about four or five minutes before he saw the deceased bleeding. The stones were then coming through the windows so thick, that he, (Witness,) had to hide himself under the chimney-brace. M'Hugh was then standing at the door, with the stones in his hand, before the shots were fired, there were plenty of stones thrown before the shots were fired, the windows were broken, the door had got several strokes before it, and there were shouts from the Mob. Witness knows a person of the name of Knox, he saw him struck, and pulled in at a window, it was an old house, and had no glazed windows; he could not identify any of the attacking party, there were a great number of them.

*Cross-examined by Mr. Lyle*

Witness said it was about two o'clock when he saw Knox dragged through the window. At that time he did not see any of the Prisoners, there were several before and after that time, he did not see the Prisoner M'Hugh give a blow to any person on that day, he, (M'Hugh,) was standing with his back against the wall when the deceased had the gun in his hand, it was at that time M'Hugh said, "Bob, don't shoot us." M'Hugh was standing rather sideways to deceased. At this time there were upwards of fifteen persons in the house, they had to go out backwards, in consequence of the stones coming in at the door, and at the windows. The Yeomen went out in the rear of Tiernan's, and then went up the street, and then went home. On their first coming into town with their guns, they went down below Tiernan's house, about fifteen or twenty yards to the open ground, and then returned. Witness did not see the Guard receive a blow either with stick or stone before or after they left Tiernan's house. He saw no persons running before them. The Mob followed the Guard when they were going down the street, and they then retreated *forwards*. He saw the Witness Samuel Johnston, in Tiernan's house, when the Guard came forward, but he did not hear Johnston, or any other person, call out for Rebels or Ribbonmen.

*Witness examined by the Judge.*

Witness said the people were four or five yards from the Guard, when they (the Guard) retreated to Tiernan's house, some of them were nearer. The deceased and

M'Hugh were standing at the door, M'Hugh farthest out. Deceased had a gun in his hand for his defence. He cannot say who the person was that fired the shot out of Tiernan's, but he was certain it was not the deceased, as he (Witness), was standing behind him. He saw the deceased at the head of the street with the party he called the Guard.

*James Philips examined by Mr. Scholes*

Witness said he lived in Aughaleague, about a quarter of a mile from Ederney. He was in the fair, he did not go till evening, from his own door he saw several persons winding cudgels on the Brae Face, coming out of the fair. He heard some calling out "who dare say against the Castle Coal Boys." Witness did not know any of them. After that he went into the fair. He first went to Tiernan's house, he made a TRUCE with a few friends to defend themselves, and he did not intend to offend any one but to bring out those that were caged up there. He and the party that went into the fair with arms might be in number about ten or twelve. The Mob were in a most disturbed rebellious like state, parading through the streets. When the Mob saw the Witness and his party going into Tiernan's house, they commenced throwing stones in great numbers. The bottle they made was like a carload of stones throwing down on the ground. It was a considerable time after the stones were thrown, that the shot was fired. (Witness identified the Prisoners, James Kean, John Muldoon, and Thomas Scallen), he saw those men throwing stones. He heard the Prisoner Keon ask James Cooper what made him (Cooper) bring arms there, and what authority he had for doing so? Muldoon and Keon were very active among the Mob. Keon had a loaded whip, Muldoon had a staff. In three minutes after Witness saw the deceased bleeding; he was standing in the door of Tiernan's house, and was not bleeding when Witness first saw him. When the front door was made fast, Witness and his party went out of the back door, and on going to the front, he saw Muldoon and Keon with the same weapons in their hands, in front of the Mob. Witness went up the lower part. He saw the Mob follow up the Guard who were retreating, some of the Mob said, "damn you, why don't you come now, and fall on them." Muldoon and Keon were among them. The Guard then went off home as quietly as possible, not giving or receiving offence.

*Cross-examined by Mr. Macklin.*

Witness did not see any of the Guard struck with the stones. This was not the first time he was in the Sessions



House. He had warrants against persons before this trial, for having beaten him, he was at many fairs in Ederney, the Protestants found it dangerous to go to them, he had obtained warrants against his neighbours before, and had compromised some of them. He did not, on this occasion desire money to be left under a stone to compromise this affair; if it was a good trade to compromise, the Protestants might have made enough of it, as they were well beat and abused. He could not say how much his expenses were in travelling night and day, to take the persons that beat him. He never gave the least hint that money might be left under a stone to compromise this business. On another occasion a friend pressed him to settle a quarrel, and he received seven shillings and sixpence, for which sum he was afterwards processed. He knows Jack Sommerville a constable, and Robert Carlton of Irvinestown. He does not recollect telling them that if a little money were left under a stone, he would not come forward as a Witness on this business, he does not think he said so. Many persons came to him and said, it was better for him to settle, than to have his house burned. He had no business in the fair, he did not go to buy or sell, he was in his own door, and saw persons that seemed familiar to him. He went and asked what they were doing, he got a gun in Drumkeen, he does not remember from whom he got it; he did not see it loaded, David and William Ingram were in Drumkeen, Johnston Camble, the two Coopers, and one Elliot were there, and he believes one of the Morrissons and one of the Nidderrys were there, he does not think there were bayonets for all the guns, some of them were fixed and some of them were not. Robert Ingram and some friends were stormed in Tierney's house, and they went to relieve them. Tiernan's door was open when the Guard came down to it, there were no mob round it then, but they were convenient to it. No one of the mob obstructed their passage into Tiernan's house, or prevented them entering it. He heard a man ask Cooper what was his authority for carrying a gun, but does not recollect the man saying that his gun was his authority. He was at the taking of the Prisoners, some of them were unruly, and perhaps they got some blows, he did not see the prisoner Cosgrave receive any abuse at Major Irvine's.

QUESTION BY THE COURT.—Were any of your family in the fair. A. No my Lord, none of my family or connections were in the fair, but I went to assist my friends and neighbours.

*Christopher Johnston examined by Mr. Boyd.*

Witness said he was in the fair on the day of the riot. He did not belong to the Guard, he saw rioting in the fair about

twelve o'clock, he went into Tiernan's house in the evening, he saw the prisoner James M'Hugh there, he and Witness were drinking in the same room together he saw the deceased Robert Ingram, after he had received the wound in his head; Witness thought badly of it, it appeared to have been inflicted by a stone. He saw a number of people about the door, behind the Guard, who were coming into Tiernan's, they threw stones, he was struck with one, he heard a shot in the front of the house, the stones were thrown at the house before it was fired.

*Cross examined by Mr. Dogherty.*

Witness saw the first riot, it was over about one o'clock; he went home after it, he resides about a gun shot from Ederney, he returned back to the fair in about an hour and a half afterwards, to converse with a friend that was going to America, there was no disturbance in the fair when he returned. He went to Tiernan's house, and took a glass with his friend up stairs, he saw no person confined in the house, nor any obstruction to persons passing in or out; his wife was with him he believes it was one of the Ingrams that fired the shot, and he has heard it was a blank cartridge, he thinks he held the gun in the ordinary way. The prisoner M'Hugh, was then up stairs in the same apartment with the Witness, drinking a glass with a young woman. He remained in the house for some time after the Guard went away, he then returned home, and did not receive any injury from any person. The Guard, he thought, was in greater danger than himself, he thought there would have been no stones thrown if the Guard had not brought arms into the fair. He knows the prisoner M'Hugh since he was a boy, and cannot give him a bad character, but rather a good character.

Question by the COURT.—Did you leave the prisoner M'Hugh in Tiernan's house behind you? A. No, my Lord, he and the young woman left the house a few minutes before him, he (Witness) went to the door, before the prisoner came in, and he did not then see M'Hugh.

*John M'Iver examined.*

Witness said he was a private in the 66th regiment, he was at the fair of Ederney; he saw stones thrown at Tiernan's house, he saw James Dunkin and Henry Burns in the Mob, they were throwing stones, (identified the prisoners James Dunkin and Henry Burns,) he saw the prisoner Burns throwing a stone, Witness said to Burns, "you do not know the consequence of house breaking, or you would not throw stones," Burns then threw more stones, Witness thought

Dunkin a mean man in throwing the stones, Dunkin told Witness he would take his bayonet from him, and put it in his backside.

*Cross-examined by Mr Lyle*

Witness enlisted at Holiday last, he got a pass to go home, he left the barbarous Mob to go home when Dunkin met him on the way, and threatened to beat him; he did not on that day draw his bayonet from the scabbard.

*James Fitzpatrick examined*

Witness identified the prisoner John M'Golrick, as being one of the party that threw stones, Witness desired M'Golrick to keep out of the way, M'Golrick replied, he would not retreat, and see his own friend a murdering

*Robert Barton examined by Mr. Boyes*

This Witness identified the prisoners William M'Laughlin and Patt Kiernan, as having made part of the Mob that threw stones, and several other Witnesses were examined to identify such of the Prisoners as had not before been identified by the former evidence. From the evidence of those Witnesses there was no fact elicited that had not been already repeatedly proved. Henry Graham the last Witness for the Crown said, that when the Guard were going down from Tiernan's, some of them said, "here to are the Coopers, is there no one to oppose them" —Case closed on part of the Crown.

EVIDENCE ON PART OF THE PRISONERS.

*Roger Monaghan examined by Mr. Dogherty.*

Witness said he lived in Edinaclich, he recollected having been in the last Ederney fair in March, he went to the fair middling *timish* in the morning, he recollected having seen men armed coming into the fair, there were about twelve in arms, it was middling late in the evening, he was then leaving the fair on horseback, and he met them as they were passing him down the street, they were going in the direction of Henry Tiernan's. After they had passed him he heard some of them say, "here is the Coopers, where is there any rascal that dare oppose them." On seeing them come in, he drew to one side, they were coming in like soldiers, they lowered their arms like charged bayonets, (Witness described to the Court the manner of holding their firelocks.) This was before they came to Tiernan's house, they seemed to rid the road, the people made way for them, he saw them going up to



Tiernan's house, he then saw them range themselves outside the house, and immediately after he saw a shot fired, and immediately after the Guard, or armed party, went into Tiernan's house, the Guard first passed down by Tiernan's house, and on their return they went in. Witness saw the people running away when the shot was fired, he at first thought the shot was fired by a person inside of the door of Tiernan's house, but he thinks it might have been fired by a person on entering the house and turning round.

*Cross examined by Mr Johnston.*

Witness said he met the Guard at the top of the street coming into town, he did not follow the Guard, but merely stopped a little to see what they were about. He was upwards of fifty yards from Tiernan's house, when he met the Guard, he was frightened when he saw them. He then got a wee bit further to see what might betide. He had been employed in the course of the day cutting leather; when the shot was fired he went home, he has a great weakness in his limbs, the street was quite *at leisure*, and there was no appearance of a riot there until the Guard came. He did not see the Guard injure any one, when they came into the town. There were numbers of people in the street when the shot was fired, he certainly heard people say that there were riots in the fair, but he saw none, nor can he describe the nature of them, he could not say that it was at the people in the street making their markets that the shot was fired.

*James Durneen, examined by Mr. Lyle.*

Witness said he was in the fair of Ederney in March last. He was there in the morning, and in the evening about five o'clock, he saw a party of men armed like yeomen, coming into the town, he saw two of the party, James Philips and William Cooper, present then pieces, but he could not say they fired, they went in at the front, Witness had heard a shot fired before this, he saw at that time no persons in arms but those two men, but he was certain they did not fire, he did not hear them make use of any expressions.

*Cross-examined by Mr Boyd*

Witness said, the fair had been much disturbed on that day, they say, there were a great number of strangers in it, he did not know them, on his oath he did not hear the expressions "Yellow Belly, or Heretic," made use of. If he had heard any person making use of improper expressions, he would have prevented them, some persons were pursued into his house,

and he protected them; a man came in that was from the neighbourhood, some of the people he knew, and some of them he did not know, he saw two of the Guard presenting their guns, it appeared to him that they meant to injure the people when they presented their guns, but he cannot say that any persons were injured by guns or bayonets, he had no friends among the rioters, he never subscribed to defray the expenses on part of the Prisoners, he never had collected any money for that purpose, nor never received any money that was so collected, he saw a man pursue Johnston Bell into his house; he took off his handkerchief, as if to fight, and held it in his hand, Witness, by virtue of his oath, Johnston Bell would have done more harm to the man that pursued than the man would have done to him, he is positive he did not see any of the Prisoners at the Bar coming into his house at that time, he did not, on that day, see any one of them either rioting or throwing stones. Witness kept a public house

Question by the COURT—How is your house situated with respect to Tiernan's? His house was situate opposite to Tiernan's, he could see Tiernan's from his house. The Pedlars and other standings were opposite Tiernan's house, there was no pass between Tiernan's house and those standings, but by the under end of them, Witness's house is below, he meant further down the street, than Mrs. Brien's.

*Peter Bogan examined by Mr. Macklin.*

Here a considerable delay took place before the attendance of this Witness could be procured.

Mr. J. Maguire (the Agent for the Prisoners) went for him several times, and on his return into Court, the last time, he complained to the Judge, "that his Witnesses were all day kept in the rain, in the street, and would not be permitted, by the Police Guard, to come into the Court-house, he was, therefore, obliged to go himself, from the Court to the street, to conduct each witness, as they were called on.

Mr Justice MOORE.—If such be the fact, I cannot too strongly reprehend the practice. Mr. Sheriff, I desire you will inquire into this abuse, and prevent its recurrence.

Mr. Bell, the sub sheriff, said he had inquired, and was informed, by one of the Officers, that the complaint was unfounded.

Mr. Maguire repeated, and insisted on the truth of his former assertion, and was ready to give evidence of the fact.

Mr. Justice MOORE, I desire to hear no more of it now. It is quite unpardonable to inflame the public mind more than it has already been excited, in this county.

Mr. Macklin then proceeded on the examination of the Witness

Witness said, by virtue of the oath he had taken, he had attempted several times to get into the Court-house, but he was kept out of it all day by the Guard, who refused to admit him. Witness recollected the last March fair of Ederney; he was in the fair about sunset, or a little before it, he saw the armed party coming into it, he did not know how many of them, he saw among them Jas. Connolly, Wm Cooper, James ———, and a man from Aughaleague, he does not recollect his name, from then appearance he thought there was about a score of them, they had guns, and bayonets screwed on them, when they were coming into the fair, the guns were over their shoulders. When they came to near William Irwin's, he saw one man of them coming forward, it was Samuel Johnston of Calure, he wrested a gun from one of them, he escaped through the rest, and swore by his mortal Saviour he would run them through. He ran at Owen M'Donagh with the appearance of *sticking* him, but he did not stick him. Mr Johnson's son, young Hugh Johnson, was with the Guard, he had a flail in his hand, the Guard then turned upwards, and he saw them going to Tiernan's door. He saw William Cooper with a gun in his hand, he desired the people outside to stand off; Witness heard a man desire him "to take care of what he was about," he, Witness, then heard a shot fired which he supposes to have proceeded from Tiernan's door.

*Cross-examined by Mr Scholes.*

Witness said he was early in the fair on that day, he went early in the morning, he saw some odd ones beaten at an early hour, he saw rioting in it, and saw some persons going into the houses for shelter, he heard of Protestants beating Protestants, he believed there were Castle-Cool Boys that day in the fair, It was in the evening he first saw the arms. The Protestants had no arms when they were beaten, which happened before the Guard came; it was Samuel Johnston that came forward. Witness did not go forward to them, he saw Owen M'Donagh then standing in the street doing nothing. He was going on his way out of the fair when the shot was fired. He heard that a man was killed in the fair, but did not hear it until long after he had left the fair.

*James Barton examined by Mr Dogherty*

Witness said he was in the fair of Ederney, he went there in the morning, he saw, in the evening, a party coming into the fair with muskets, he thought there might be about a dozen, there was a man beaten in Drumkeen a little before they came into the fair, the armed party, on coming in, went



down the street, he heard no expression made by the party, Witness went down on one side of the street, and went into John M'Dermot's, and on turning round he heard a shot fired, and then he saw some stones thrown; there were a great number of people between him and Tiernan's, it was either in, or about Tiernan's door the shot was fired. They had gathered themselves there in form, (Witness described their form,) Witness is a Protestant and goes to Church.

*Cross-examined by Mr. Deering.*

Witness said there was a very riotous Mob in the fair, they were mostly strangers to Witness, there were several Protestants beaten that day, in the fair, and the Guard came there that day for the protection of the Protestants in the town, Ederney was a rough street, he saw stones throwing; he did not see any one damaged by the arms, he recollected having seen a man putting a gun to his eye as if he meant to fire at the crowd, but he did not see him fire, there were stones thrown in the direction where the armed men were, he saw Tiernan's house when the guard left it; the windows of it were broken, and the house wrecked, he knows most of the persons at the bar. By virtue of his oath, he did not see any of them in the fair, but they might have been there without his knowledge. He was in Magee's house, and took a glass in it, Witness knows Owen M'Donagh, he did not see M'Donagh in the fair, he cannot swear to any of the party that had guns.

*Charles Gallagher examined by Mr. Lysle.*

This Witness proved an alibi, for the prisoner James Keon.—Thomas Humphrys, (one of the Jurors,) and John Beatty of Enniskillen, gave a good character of the prisoners Thomas Scallan and James Keon, and the Case closed on the part of the Prisoners.

The Jury, after about a quarter of an hour's deliberation, returned their Verdict—*Not Guilty*.

The Trial occupied the time of the Judge and the Gentlemen of the Bar, for fifteen hours.\* The Prisoners were discharged on giving bail to take their trials for Riot and Assault at the adjourned Assizes.

\* The Publisher very much regrets he cannot lay before the Public the Judges excellent Charge in this important Case, being deprived of his Note of it, with some other papers, on his leaving Court.

## INNISHMORE RIOTS.

MONDAY, AUGUST 9.

*The KING, at the Prosecution of ANNE STEWART and JOHN PYE, against DENIS ROONEY, REDMOND ROONEY, ANDREW CASSIDY, JOHN M'CONNELL, PAT. M'MANUS, MICHAEL MAXWELL, JAMES BRESLIN, and others.*

The Prisoners were indicted for the murder of William M'Creery, at Innishmore, in the County of Fermanagh, on the 17th day of May, 1824.

The Prisoners refused to join in their challenges. It was then agreed, by their Counsel, and the Counsel for the Crown, that they should be allowed to make FORTY peremptory challenges.

It is right, for the better attainment of the ends of Justice, in future, that the Public should be informed, that the persons summoned and called as Jurors by the Officer of the Court, from the Panel returned to him by the Sub-Sheriff were exclusively Orangemen. The Prisoners were all Catholics, and could not, in point of law, avail themselves of this objection \* It further appeared, that several of the Jurors empanelled, and called on to decide on the lives of the Prisoners, were summoned from the town and neighbourhood of Lisbellaw, where the friends and relations of the deceased, William M'Creery had resided. There was not a Catholic freeholder empanelled on the Jury.

When the Prisoners had exhausted the number of their challenges, (forty,) and were necessarily obliged to resort to their challenges "FOR CAUSE," Counsel for the Prisoners objected to several, on their taking the book to be sworn, on the ground of their not being freeholders, and, to others, for having previously formed an opinion of the guilt or innocence of the Prisoners, and the following persons were challenged for cause, and rejected on those objections.—

James Graham of Lisbellaw, rejected for want of freehold.

William Quintin of Enniskillen; he was not a freeholder.

Henry Copeland of Lisbellaw, rejected.

On the question being put to this gentleman, he said he might have formed an opinion, "but he did not consider it a decisive one."

\* In the Case of the King, v Dr. Sheridan, the then Chief Justice Mr. Downes over-ruled the objection.

John Mason of Lisbellaw, challenged

William Kittson, of Enniskillen, he was not a freeholder.

William Loyd of Enniskillen, he was not a freeholder.

Christopher Coulston, he was not a freeholder

Robert Hicks, he was not a freeholder.

William Hicks he was not a freeholder

——— Magee, he was not a freeholder.

Robert Hurlis, he was not a freeholder

John Soden of Enniskillen, he believed he had a freehold in right of his Wife.

Mr. Justice MOORE complained of the great waste of the public time which was taken up in the examination of this gentleman's property, which, after all, had turned out to be no freehold—when it was competent to the gentlemen concerned, on behalf of the Crown, to call on the Sheriff to enlarge his panel, it was then nearly twelve o'clock, and from the time taken in swearing this Jury, he thought it probable, he should have to remain, exhausted on the Bench (as had been the case in the late Trial on Saturday last,) till twelve or one o'clock next morning

James Copeland of Lisbellaw, rejected.

Q. Have you formed any opinion on this Case, &c. &c

Mr Johnston said he thought the question illegal, and the objection bad

Mr Boyd entertained the same opinion

Mr. Scholes, on the same side, differed in opinion with his friends,

(Mr Johnston and Mr Boyd,) during the course of his experience he had always considered it a valid and legal objection to a Juror.

Mr Deering differed with Mr Scholes

Mr Rolleston, on part of the Prisoners, said, in the course of his very long experience he had never before heard the question objected to—he, for his part, did not understand the distinction taken by the gentlemen for the Crown, between a Juror having expressed an opinion, and that of having, previous to the trial, formed an opinion either of the guilt or innocence of the Prisoners—He did not like to make any comment on the practice of returning Jurors from the very town and neighbourhood of Lisbellaw, a most disturbed part of this county, and where the friends of William M'Creery, the deceased, had resided—but while the Court was kept waiting for the book, containing the law authority promised and relied on by one of his learned friends, he would beg leave to remark, that such persons *ought not* to have been returned on the panel from that place on this Jury, and when returned, *should have been rejected without any question on their competency as Jurors.*—(Here a passage from the book was cited, which

Mr. Justice MOORE said, he did not think it applied to the



Case, and if Counsel had no other objection to make he would proceed with the Trials

Christopher Beatty of Lisbellaw challenged

Andrew Glass of Lisbellaw —He said he had not formed any opinion—but he was challenged by the Prisoner.

The following persons were then sworn.—

#### NAMES OF THE JURORS

JAMES FRITH, Cross	JOHN HENDERSON, Sydere,
SAMUEL CLARKE, Newtownbutler,	JOHN RANKIN, Kilmalanafy,
WILLIAM THOMSON, Cordabragh,	WILLIAM BEATTY, Derrybrusk,
ROBERT FAUSSETT, Lisnaskea,	DAVID IRVINE, Coolgarren,
ROBERT CLINDINNIN, Clentivern,	HENRY FALLS, Tempo,
JOHN IRVINE, Enniskillen,	EDWARD COOKE, Tempo

Mr. *Robert Johnston* —My Lord, and Gentlemen of the Jury, in this case I shall not trouble you with more than a very few observations—I shall abstain from detailing the facts that will be given to you in evidence, conceiving it better and more satisfactory for you to take them from the Witnesses than from Counsel —Gentlemen, the Prisoners stand charged with the crime of Murder, alledged to have been committed at Innishmore, in this county, on the 17th of May last, and I most sincerely hope they will be able to acquit themselves of that foul charge. The general circumstances of the case, as they appear from my instructions, are these.—On the 16th day of May last, two persons, one of them of the name of Denis Lunny the other of the name of William Kenny, happened to have a dispute on the public road—they were then prevented from fighting, by persons passing at the time. However, they mutually agreed to settle their differences by a boxing match, and for that purpose, appointed to meet on the next day, at a place called Clenticoragh, in the island of Innishmore —On the morning of the next day, (the 17th,) at a very early hour several persons assembled on both sides, some of them to gratify an idle curiosity, and possibly not with any wicked or malicious intention to commit murder. The party to which the Prisoners belonged, namely, Lunny's party, very much exceeded, in numbers, the other party, to which the deceased belonged, which was called Kennys party. When they came to the place appointed to fight the challenge, instead of deciding the matter by single combat, a general battle, or affray, took place —Gentlemen, his Lordship will tell you that that affray was an unlawful assembly—and, gentlemen, the Witnesses will tell you, that in this general battle, a homicide was committed—that a person of the name of William M'Creery lost his life. In the course of the trial it would appear that the deceased was knocked down senseless, and did not survive the wounds, he then received

for more than a few days.—Gentlemen, if this fact shall be proved to your satisfaction, you shall take the law applicable to and arising from it from the learned Judge. The law authorities on this subject would be found well arranged and collected in a book recently published.—He alluded to First Russell's Pleas of the Crown, p. 154—(here Mr Johnston read extracts from the book, tending to show the legal distinctions between the crime of murder and manslaughter.)—Gentlemen, I think it very probable, from the general nature of the evidence that will be produced on part of the prosecution, that a question of this nature will arise for your decision.—If you find that without any premeditated design or malicious intention, either of the principal, or of the persons aiding and assisting him in the commission of the act that occasioned the death of the deceased, and that it proceeded from the effects of a sudden quarrel arising from the sudden heat and passion of the moment, in that case, in my opinion, the crime would amount to manslaughter—but if, Gentlemen, under all the circumstances, you believe the Witnesses, and the evidence they will give you in this case, I think, Gentlemen, it will be your bounden duty to find the Prisoners guilty of one of two crimes, namely, either of murder, or of manslaughter

#### EVIDENCE ON PART OF THE PROSECUTION.

*Anne Stewart examined by Mr. Boyd.*

Witness said she was in the Island of Innishmore, on the morning of the 17th May last—she recollected what happened on that day, she first heard persons shouting and huzzaing, she was not there on the day the challenge was given, she heard there was a challenge to be fought, there was a great crowd assembled, she heard the challenge was to be fought by two boys, William Kenny and Denis Lunny. It was in the morning about six o'clock she first heard the shouting; there was so many of Lunny's party they would not let them fight, Kenny's party ran away, and the other party followed them. She cannot tell how far Lunny's party followed them, they followed them up the hill, and beat them with sticks and stones. She saw William M'Creery there, he is dead. The party fought past him, and they followed and beat the other party wherever they met them. The party that pursued the others, had passed William M'Creery before she went up to them, she found him lying in a potatoe furrow; Lunny's party had then passed them more than the length of this Court-house. She then went up to him and lifted him up, with his back against a ridge, she had no person with her when they lifted him up

and set him on his rump. She then saw his brother Joseph, he was desperately beaten. The two brothers were then about two or three ridges asunder, she stood behind Joseph when he had fainted, she then saw something happening to William; she could not tell how many minutes passed from the time of Lunny's party advancing, until they came back. She saw them on the retreat, coming back, Lunny's party were coming up after doing the harm, and beating Kenny's party towards the house, there were about two hundred of them, armed with sticks and stones, she saw Andrew Cassidy and John M'Connell, (identified the Prisoners.)—The Prisoner Andrew Cassidy, had a stick and a stone, M'Connell had a stone. He struck the deceased first, and then struck him as wickedly as he could. Cassidy struck him as he passed him by, struck him with a stone about two pounds weight, M'Connell gave him a kick, the stone hit the deceased in the back of the neck, William M'Creery then spoke to her, and said, "honest woman, whomsoever you are, these are the blows that pinned me." He was lying at that time, there were a great number on before Cassidy and M'Connell, she could not tell how many, there was not one that passed that did not strike deceased, some of them would say, "that is fine chopping," others of them would say, "boys, what is it we cannot do." She remained with Joe M'Creery, and went to hide him when she saw them in such wrath coming down. They said they had one, and they would have more. She threw herself on the man, she did not think that William ever spoke a word after. He did not live more than three days.

*Cross examined by Mr. Rolleston.*

Witness said she was a married lady, it was three years since her last marriage, she had her eldest child before her marriage, her name is Betsy Hoe, she never had more children than one before her marriage, her present husband's name is William Stewart, she had lived a month in Innishmore, she then went away to another land for some time, and then she came back again to the Island.

Q. By virtue of your oath which party did you like best?

A. I don't understand you, Sir, I would not like one side more than another.

Q. Were there not, Mrs. Stewart, some respectable persons there as well as Mrs. Stewart? A. I don't know who was there, I suppose there were respectable persons; Mr. Armstrong, the landlord of a part of the Island, was there, and Mr. Moore was there, she supposed Lunny lived on the Island, he did live on the Island, M'Creery did not live on the Island, she did not think that any of his party lived on the Island, she thought they lived side ways to Lisbellaw, some of them had sticks



and some of them had not, she could not tell whether forty of them or thirty of them had sticks

Q By virtue of your oath, Mrs Stewart, did you see a stroke given on that day, by any one of Kenny's party? A I cannot tell whether they fought or not.

Q On your oath, do you tell that Jury that you did not see Kenny's party strike a blow that day? A I cannot say I saw them striking I saw them speaking to Lunny's party.

Q. On your oath, did you hear a shout on that day by Kenny's party? A. I don't mind, yes, I did, when they were running away, but did not hear them mention any thing particularly.

Q Did you hear a shot fired by Kenny's party on that day? A. I did not, I saw them take the gun before the fight, but knew not what they did with it, Mr. Stewart, her husband, was there, she had a brother-in-law there, they came to see the challenge, and witness went after them, she liked her man, but she did not advise him to go home.

Q. On your oath, did not your husband, on the night before, receive a notice to attend at the challenge on the next morning? A. Any further than from report, I cannot tell, I went, as was usual, to see them fighting.

Q. Is your husband an Orangeman? A. I don't know, they would not let me into the secrets

Q Is not your husband considered a good fighter? A. I never saw him rightly tried yet

Q You and he have had some sets-too? A I never had any dispute with him in my life.

Witness continued — When Lunny's party went down to the ground, Witness knew that Kenny's party could not stand before them, she did not see any blows given when the parties met, they were all fighting through each other, she could not tell how many, nor the persons fighting, Kenny's party could not fight, for they were surrounded in the field, she saw many a gun, when the Lisbellaw men came, after the man was killed, she saw only one gun before that, but she saw many a gun when the Lisbellaw men came to bring away the dead man

Q Who had that one gun? A I cannot tell, nor where the person got that gun

Q. Did you see a gun in the hands of yourself and of another girl? A. I was taking it out of the hands of another girl, she was Miss Kenny, but the gun had nothing in it, I saw them drawing it the night before, at Kenny's house

Q Who did you see drawing it? A It was themselves, the Kennys, drew her, but cannot tell what they were drawing her for, I did not count the persons then present, there were not ten, there were no strangers present.

Q Were they not taking the charge out of the gun, lest it would do damage on the next day? A. I can't tell, I saw only one gun the next day, I was helping Kenny's daughter to hold the gun, it was Denis Rooney that was taking it from her, Billy Armstrong and Denis Rooney struggled for the gun, I cannot tell whether Armstrong is Kenny's son-in-law, or not, he is under the name of it, Armstrong took hold of it to keep Denis Rooney from getting it, I might have seen the gun, but cannot say positively whether I saw it after that time or not.

Q How many shots did you hear fired? A. I cannot tell; I heard the boys were to fight on the night before, but did not hear of any persons being warned to attend, baring their own pleasure.

Q. Did you see a man of the name of Rooney attacked by Kenny's party? A I did not see any man attacked; it was in the potatoe ridge I saw Kenny, his party was then running away

Q Did you see any particular colours? A I saw whitish colours I saw a white flag on Lunny's hill, it was a handkerchief, Lunny's party had it, I did not see any particular colours with the other party, but I will not swear that they had not colours.

*Re examined by Mr. Boyd.*

Q You said Denis Rooney interferred and struggled to take the gun Point him out to the Court (Identified Prisoner) Witness was on the Island before any blow was struck, but could not tell which of the parties were most numerous at the commencement

*Examined by the Court.*

Q Do the Lunnys live in the Island? A They do.

Q. Do the Kennys live in it? A They do

Q Did the several parties come to the Island at the same time? A. They did not come together, some of them that came lived beyond the Lough

Q When you saw Lunny's party retreating back, did Kenny's party pursue them? A. I did not take notice whether Kenny's party were pursuing them, I do not think the fight was then continuing

Q What was the rest of Kenny's party doing? A. They were staying on the hill, some of them might have gone into the town, there was many a one not in the field

Q. Can you explain why it was that the gun was uncharged at Kenny's on the night before? A I cannot tell.

Q. Had you no curiosity to inquire? A. I must acknowledge that I am a little curious, but I did not inquire.

Q What brought you to Kenny's house on that night?  
A I went for milk.

Q. At what hour? A. It was muddling late, near sun-set, no person with her

Q. What men were in the house? (Witness took some time to answer) A. I must wait to count them, there were either three or four, they (the family) were all there on that night

Q. Who drew the charge from the gun? A. I don't know which of them, I heard the gun rattling as if there were shot in it, that was what they were doing, I cannot say whether they were charging or not charging, I did not see any powder.

On a question put by Mr Boyd, Witness said she did not say the gun was empty

*John Pye examined by Mr Scholes.*

Witness said he was in the Island of Innishmore on the morning of the challenge, he does not live in the Island, he lives in Lisbellaw, he had heard there was a challenge to be fought between Lunny and Kenny he was present when there was a life lost, he saw M'Creery, the deceased, on that morning, before any thing happened, he was then in a good state of health, he saw a man of the name of Thomas Rooney, he came forward with others, and they struck the deceased Thomas afterwards took up a stone and struck him on the head with it, with his two hands, the stone in the opinion of Witness, was twelve pounds weight he (Rooney) took it in his two hands and struck deceased on the head with it, there were other persons present, (identified Denis Rooney) Denis Rooney was standing within about a yard of the deceased when this happened, and he (Denis Rooney) struck the deceased two blows with a cudgel when lying, he also saw the prisoner John M'Connell, they were all standing round the deceased, there was another man of the name of Redmond Rooney (identified him) and another of the name of Pat. M'Manus (identified the Prisoner) Witness saw this Prisoner strike the deceased two or three blows with a cudgel when lying, there were a great number of others, Lunny's party were the greatest in strength, we retreated off the ground where the challenge was to be fought, he saw D Rooney do nothing but strike the two blows with a cudgel, nothing but that, Witness and his party were going towards Kenny's house to make their escape from the ground, Witness did not remain longer, he had to fly for his life, he returned to the ground in about a quarter of an hour, he saw M'Creery at that time, there were other persons there, Lunny's party had then gone towards Lunny's house, and M'Creery



was taken up to Kenny's house, he thinks there were between four or five hundred of Lunny's party on the hill, after they went off the ground where the fight was, Witness could not take upon himself to say what other persons were there besides the Prisoners, he thinks a man of the name of William Carlton was there, they were spread in such a way, he could not tell how many were in pursuit, but there were enough to beat his party.

*Cross-examined by Mr Dogherty*

Witness said he was not a Lisbellaw Peeler, he lived at some distance from Innishmore, he did not know how far he lived from it, he went to see the challenge, there might be better judges of fighting than he was; it was day light when he left his own house, he heard on the evening before, there was to be a fight, he heard persons in Lisbellaw talking of it, he heard a man of the name of Carroll talking of it, he told Witness there was to be a fight there, he did not go there as the friend of Lunny, he did not go to assist either party, he supposed there were not more than a score went with him; he had a staff, some of the score might have had cudgels, he went to see the fight, his cudgel would help him along the road, he brought his cudgel lest any man might *mislead* him, he heard there was a man that had a gun, when he went to the Island, he went directly to Kenny's party, up to the house, he did not send for guns, he saw guns after the fighting was over, he could not say he saw twenty, there might have been about fifteen, he might have had a gun to look at her

Question by the COURT.—Witness, had you a gun on that occasion? A I might have put my hand on a gun, it was after the fight was over not very long after, there was nothing in her, he just took up the gun for curiosity, he gave away the gun soon after, he can't tell to whom he gave it, he heard a shot fired, he heard more shots than one fired, there were some shots fired

Question by the COURT.—Did you see any shots fired on that day? A. Yes, I did see a man fire a shot, did not see ten shots fired, I heard several shots, there might be people fowling, and I not see them, it is a customary thing, I could not say they were fired by the party, he did not know of any houses being attacked, he might have read it out of the newspapers that cots were broken, he did not know whether it was here or not, Denis Rooney lodged examinations against him.

Q. Were you not a Prisoner in the gaol? A I passed bail in the gaol.

Q. Who took your bail? A I believe it was Captain Gabbett?

Q. You are not certain? A. I am sure it was, and I think, and I am sure of it too, but I swore against Rooney first

Question by the COURT.—What time did you go to the gaol to lodge examinations against him? A. At the time there were Magistrates in the gaol, I came along with another man to the gaol to get examinations against Denis Rooney.

Q. And then he swore against you? A. I believe so. Witness said he made no use of his stick but to protect himself, and on his oath he struck no man till he was struck himself.

Q. Did you take up a stone on that day? (this question was several times repeated before the Witness answered it) A. I threw no stones.

Q. Did you take any up? A. I lifted no kind of a stone, I can't tell whether Kenny's party threw stones or not, if they did it was in their own defence, I fought to get away, I was running away.

Q. Who was to be second to Kenny? A. I suppose that has nothing to do with the case.

Q. Answer the question, Sir, you know it very well? A. There were two persons appointed, and one of them ran away, Hetherington was the name of the man, he lives in the other side of the Island.

Question by the COURT.—What were those men to fight about, what was the cause of quarrel between the people? A. I cannot tell.

Q. Have you heard? A. I believe Lunny and Kenny had some party quarrel.

*Andrew Nugent examined by Mr Deering.*

Witness said he had known the deceased, he was in Innishmore on the day he received the blow that occasioned his death, Witness lived in Innishmore, at about a half a mile's distance from Clentacoragh, he saw him in the Island that morning, about sun-rise, there were some persons with him, Witness saw the deceased after he had received the stroke, lying on the ground, he saw a number of persons around him that seemed to be foes; they had staves in their hands, he knew the prisoners Michael Maxwell, James Breslin, and Denis Rooney, (identified the Prisoners,) these three had staves; he saw Michael Maxwell and James Breslin strike the deceased, he was lying on the ground when they struck him, Witness did not see Denis Rooney strike him, but heard Denis make use of some expressions, he heard Rooney say he would never leave the meadow until he would have a Lisbellaw man's life, the deceased was lying on the ground when D. Rooney used these words, he could not tell the exact distance from the Monteagh side of the Lough to Innishmore, the numbers that came from that side were in appearance past counting, they came from all directions, some came from Ballymianone, all those that came from the Monteagh side had white marks

on their hats, he was speaking to Denis Rooney, he was flourishing through the meadow, and calling his own party cowards, and flourishing and asking them what were they about, and what were they doing, Witness went up to him, and told him "it was a shame to see an old man raising disturbance" He replied that he would never leave the ground till he would have a Lisbellaw man's life, every man of Lunny's party had a staff, Witness could not tell what they were saying, they were throwing up their hats and making a great noise

*Cross examined by Mr. Rolleston*

Witness said he was one of Kenny's party, he was his neighbour, and he was in the party at Kenny's house, he is related to Kenny, their mothers were sisters, he had a stick in his hand, he did not want to hang the Prisoners, the Judge and Jury will do what they think fit, he was not charged with a riot on that day, he was knocked down on that day, he was running away to save himself, he supposed the deceased had a stick in his hand before he was knocked down, both Lunny's party and Kenny's party were quarrelling at the time, he did not think Kenny's party able to resist Lunny's, they were then beating Kenny's party, they had the worst of it at the time, he saw them stript in the meadow before this, Kenny was stript, Mr Armstrong came and said if Kenny's party would leave the meadow, he would make Lunny's party go out of it

(Here Mr. Rolleston inquired from the Counsel for the Crown whether it was then intention to examine Mr Armstrong)

Sir James Galbraith said it was certainly his intention to examine Mr Armstrong.

Witness said he was present at the time when Lunny challenged Kenny, Kenny wanted him to fight it out then on the spot, the other fellow refused, and desired Kenny not to disappoint him next morning

Question by the COURT—Were there any riots in the country previous to this fight? A. There were, he did not know of any Catholics having been beaten?—Yes, there were Catholics on the 12th of May in the fair of Maguire's-bridge.

Witness knew the Witness, Anne Stewart, he saw her lifting the body

Q. Your party, you say, was beaten in Kenny's meadow, and with one consent they left it together? A. They did, they would not have left Lunny's party, but they would have been killed had they remained, the two men that were to fight were not suffered to fight.



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but little disputes otherwise, he recollected being informed of the boxing match between Lunny and Kenny, it was to take place on the day following (Monday,) about five o'clock, Witness went to the place appointed about sun-rise, he went with the intention of flattering them to be friends he went to Lunny's house first; he met there the father of the young man, he thinks the young man himself was there; but Witness is not positive whether it was the young man that was to fight, there were many persons there, he could not say how many, they did not belong to the family, there were many persons whom he did not know, they were not inhabitants of the Island, in number he would say about twenty, he made some representations to them, he spoke to the old man, the father, and said it was a bad business, and that I thought he should endeavour to dissuade his son from fighting, he (the old man) told me he had not authority enough over his son to dissuade him, he remained but a short time, only a few minutes, and when he was in the act of going to Kenny's house he saw a party of men coming out of Kenny's house, and going towards the meadow, Kenny, the boxer himself, and his brother were of that number. Witness went to them to the meadow, and made similar representations to them, they had not the effect he wished, they would not desist it had, however, an effect on some, I asked them why they had come on such an occasion, they replied, that they had come to see an play some went away, there remained from about half a dozen to half a score, but more had accumulated while I was speaking to them, he did not recollect the numbers, they would not take his advice, a party of them did take his advice, and retreated from the fields, at the time he was speaking to them he did not see any fire-arms, he then proceeded towards Lunny's house, and on his way, within about a hundred yards of it, as he was ascending the hill, a party from the opposite side came rushing into the meadow, then Lunny's party rushed in and met them in the field, there was a second party came from Lunny's house, they might have numbered about thirty, the two parties then joined, I did not see one of the parties till they came to the end of the meadow, there was shouting enough on all sides, in a short time Kenny's party fell back, they retreated from the meadow, making their way, they then got into a piece of potatoe ground, Lunny's party followed, he did not know Wm M'Creery, there was a man died in consequence of what happened, he saw that he died in consequence of the beating, after he was beaten he was lying in the potatoe field, he could not say by what party he was struck and knocked down, there was no fighting until both parties joined in the potatoe field, Lunny's party followed Kenny's into that field; he saw the fight, and sticks and stones flying on all sides, some



time after that he saw arms, but he did not see any fire-arms during their fighting in the field, he made no calculation as to the numbers, he thought Lunny's considerably the largest party, he did not think they were double the number during the time of the fight in the potatoe-field, but they increased in numbers after the battle was over. The parties then separated, Kenny's party went towards his father's house, and the other party to Lunny's house. Immediately after the parties had separated he heard the firing of shots, but, until then, he had heard no shots. Lunny's party did not re-assemble there, they went to Lunny's, and staid there for a little, they did not accumulate while they remained there. They then went to another house off the road, he thought from their appearance there, that their numbers had increased, they then seemed to make about two hundred.

Q When they were coming back, could they have passed through the potatoe field where M'Creery was lying? A. They went in an oblique direction to it, and crossed a part of it near the corn field. Kenny's party came then and carried M'Creery away. A man from Lunny's party came to Witness and requested him to prevail on Kenny's party to go away. Witness told him he would not do so, his interfering then he thought would rather bring them back again, they did not go on his first invitation, he thought Lunny's party were too near the way that Kenny's had to pass. He begged the man who came to him to remove Lunny's party further from the road. Lunny's party, soon after removed themselves about a quarter of a mile, and ranged themselves in a field along the side of a hedge.

Question by the Court—Was this long after the deceased was wounded? A. It was—Witness sent his son-in-law to Kenny's party and he brought them away. He thought he heard shouting from Lunny's party. On his returning home, he met several persons on the road, some of them had arms; he met three of them with fire arms, and those three were together.

Q Did you see any of the Prisoners at the bar there? A. I believe I did, but I did not see any of them near the place where the battle was fought, but the old man.

Witness identified the prisoners Denis Rooney, Michael Maxwell, and John M'Connell.—During the fight the Prisoner Maxwell was standing beside myself, and John M'Connell was standing beside him, I think they remained so.

*Cross-examined by Mr. Rolleston.*

Witness said he was the landlord of a considerable part of the Island of Innishmore, he was agent for the gentleman who was entitled to the remainder of it, he had used his influence

to protect the peace he went from Lunny's to Kenny's party. all the family knew him, but there were persons present that he did not know, he used his influence with Kenny's party to keep the peace. Witness's endeavours proved ineffectual. Kenny seemed determined to fight the battle. He, (Witness,) did not take particular notice of any Orange Ribbons. He left Kenny's with the intention of returning to Lunny's party. He heard shouting, Kenny's party shouted before he left them, he thought the shouts were intended as shouts of defiance to the other party. They were on the meadow ground, at that time, he saw some of Lunny's party about the house, but they did not come near Kenny's till after the shouts of defiance, and after Kenny's party were in the meadow. Kenny's party then retreated into the potatoe field, there were a great many stones in the potatoe field.—By virtue of his oath, he saw stones throwing in that field, by persons attached to all parties. There was then a general quarrel among them in the potatoe field, he did not see the deceased knocked down, but he saw M'Creery lying on the ground, very early in the engagement he saw him lying on the ground, he knew the old man Denis Rooney, he considered him an honest man, he did not think him (the prisoner) much of a quarreller, but he seemed a little rough in his temper and disposition. Than Denis's son, the prisoner Redmond Roorey, there could not be a better character. He had always known him to be a quiet peaceable boy.—Maxwell is a young man of excellent good character.

Question by the Court.—You say Maxwell and M'Connell were standing near you during the fight? A They were, I don't think Maxwell was with either party. It was after the parties had arrived, that Maxwell came to me, he did not go with the riot, I am inclined to think he was standing with others beside me during the fight, but I will not swear it positively.

Q With respect to M'Connell, do you think he remained near to you during the fight? A I think both those men acted in the same manner—that they both remained beside me, but, I am not positively certain that they continued beside me during the whole time.

*Robert Montgomery, examined by Mr Lysle*

Witness said he was in the Island of Innishmore on the morning of the 17th of May last—he saw a number of men assembling there on that morning—they were coming from Monteagh, he saw a person of the name of Lunny, (Lunny's brother,) pointing to the men to come. He saw him on the shore, waving his hat to them. The Monteagh men came across the lough in cots—there might be about fifty of them, and they came over to the place where the challenge was to be

fought—each party cheered and threw up their hats, they then rushed forward to Kenny's party, there were about thirty of Kenny's party, Kenny's party strove to make peace. He heard one of Kenny's party desire the rest to run off, and they did so, they ran a few perches out of the meadow, Lunny's party followed them, they overtook them in the potatoe field, and began to beat them as fast as they met them. There was a man killed, he was all as one as killed—(Witness identified the prisoners Denis Rooney, Redmond Rooney, and James Breslin)—He saw the Prisoners coming to the field, he heard shouts, but did not remember the particular expressions—Denis Rooney said, that if any man brought arms there, they would be smashed.

*Cross-examined by Mr. Dogherty*

Witness said he lives with his father, his father did not go with him to the Island, but they were both there. He got a stick at Kenny's house. Witness belonged to the Protestant party, he caught a hold of Redmond Rooney by the breast and called to him to make peace, he went first to Kenny's house, there was no use to attempt to make peace, he liked Kenny's party as well as Lunny's, he did not desire to hang any of Kenny's party, he saw Mr. Armstrong there, but thought it a folly to interfere in assisting him to make peace. He did not speak to Kenny, nor advise him to go to the field. His father is a constable, he was in the Island. His brother was at Kenny's house, he did not see Kenny strip, he did not endeavour to bring him away before the fight. He saw stones thrown, he did not take a stone in his hand, he could not tell how many blows he struck himself, it was with the cudgel he struck which he got at Kenny's, he struck to defend himself and his friends, he had no gun at any time during the day.

*John Horne examined by Mr. Boyd.*

Witness said he was in the Island of Innishmore on the day of the fight, he recollected having seen a man of the name of John Lunny. There was a fight between Lunny and Kenny's—Q What did Lunny say?

Mr. Justice MOORE—Lunny is not on his trial, and I shall not allow his expressions to be given in evidence.

He saw the beginning of the fight in the potatoe ground, he did not see any of the Prisoners present but Denis Rooney, he saw Denis Rooney giving the first blow, he gave it to a man of the name of William Phair, and Witness heard Rooney swear "by the immortal Saviour he would not leave an Orangeman or a Lisbellaw blackguard alive." We were running at the time Phair was knocked down. At that moment they all then fell to and smashed them *out of a face*. The number of



Kenny's party was about twenty six, the rest retreated, there were about three hundred followed them

*Cross examined by Mr. Rolleston*

Witness said he had come, on that morning from Ballendaragh side, a few miles from the Island. There came about fifteen persons with him, they had all sticks, none of the fifteen were inhabitants of the Island, they went there with the intention of seeing the fight, he was not ready to die, but he was ready to conquer any man that would strike him, he was not very angry now, he went there to defend himself, and it was no matter what he did with the stick.

*Abraham Irvine examined.*

Witness said he was at Clintecoragh, in the Island of Innishmore on the day of the fight, he saw Kenny's party go to the ground appointed, he saw Mr. Armstrong there, and heard him request to settle the dispute, he after that, saw Lunny's party going to the ground, and Kenny's party soon after retreated. He saw the prisoners John M'Connell and James Bieslin throwing stones. Bieslin had a stick, and struck with it, he was running away when the deceased was a lifting up. Witness saw Denis Rooney encouraging the party, but he saw Redmond Rooney winding his staff, and heard him calling out for a Protestant, an Orangeman, or a Lisbellaw black-guard to show their faces, and he would beat them off the field. He did not see him strike any one at the time he used those words, he could not say how soon after the wounded man was struck, but it was when the parties came to the ground.

*Cross-examined by Mr. Rolleston*

Witness said he fought, himself, plenty on that day—but it was all in his own defence.

*William Musgrove, examined by Mr. Deering.*

Witness said he recollected the 17th of May last, he then lived in Deirrybrusk, opposite the Island of Innishmore, he had a view of Innishmore from his house, and saw a number of persons passing and repassing in cots, he saw, afterwards, a number of persons, strangers to him, retreating out of the Island, there might be about two hundred.

*Cross-examined.*

Witness heard shots firing after the retreating, and heard there was a man wounded.

*Thomas Quinlin, surgeon, examined by Mr. Luton.*

Witness said he was called on to visit the late William M'Creery, it was about the hour of twelve o'clock at noon,

on Monday the 17th. He found the deceased in bed, in a state of insensibility. He examined his body first, afterwards his head. There was a small wound on his skull, and a large fracture he extracted seven pieces of bone from his skull, the wound then appeared to him to have been given by a blunt instrument. He attended him till his death on the 20th. He saw a good deal of contusions on his right shoulder, he thought his death was occasioned by extravasation of blood on the brain, it must have been from a rupture of the blood-vessels —Case closed on part of the Crown

## EVIDENCE ON PART OF THE PRISONERS.

### *Hugh M'Manus examined by Mr Dogherty*

Witness said he lived in the Island of Innishmore, he was there on the morning of the 17th of May last, he knew William Kenny he saw him on that morning coming to the field to the fight, there were more than a score of men with Kenny. Witness heard them shouting on the ground, and calling on the Lunny's Popish party to come out, and if they would not come, that they would go up to Lunny's and massacre them; no riot had then commenced, Kenny's party went then to the field, in Lunny's own land, the Kenny's were calling them a set of cowardly rascals, and daring them to come out. Shortly after, he was struck with a slane himself, as he was going down, the blow knocked him down senseless. He did not see any other stones thrown, he was running to the relief of the man that he heard was a killing, he thought the stone that struck him was the first stone thrown; the quarrel was then going on in the field, they were all fighting and running through each other like sheep.

### *Cross-examined by Mr. Johnston.*

Witness said there came a party from Monteagh, there came another round the hill, they joined the party at Lunny's house, the meadow field, and the potatoe field, were both under one, there is a drain in both sides of the potatoe field; there was corn, and potatoes, and meadow, all growing in the same field, the potatoe field belonged to Billy Kenny, he did not know the men he saw about William M'Creery, he came there for the purpose of making peace, and he went there to assist his landlord, Mr. Armstrong, to keep the peace, and to keep them asunder. He knew the prisoner Cassidy.—He (Witness) was told that Cassidy was not there, he believed the person that told him so, he did not think he would tell him an untruth.—If two or three persons had sworn they saw Cassidy in the fight, he might have believed them.

Question by a JUROR—How near were you to the deceased when you were struck with the stone? A. At the time I was knocked down I was within ten yards of William M'Creery, the blow Witness got knocked out a tooth, and there was the place he was struck, he was under bail to take his trial for the riot.

*Patrick Monaghan examined*

Witness said, he recollected having seen Kenny's party in the potatoe field, he saw William M'Creery lying in the field, and seen him rising up on his seat there were three or four men struck him with staffs, he did not know the persons that then struck him, he knows the Prisoners, and did not see them strike him, he is certain the five men at the Bar did not strike him

*Cross-examined by Mr Boyd*

Witness said there was a great crowd about the Prisoner, he knew the two M'Creerys he did not see Joseph lying in the field, Witness was not there at the beginning of the fight, he knew five of the Prisoners in the dock, and is certain that none of them struck the deceased, he saw four men strike the deceased, he did not know them, he was looking at William M'Creery, he remained with them and could not mistake, the man that they carried up on the boy's back was the person struck with the sticks

*John Maguire examined by Mr Fogherly*

Witness said he did not live in Innishmore, he lived at a place called Kennawly, he was in the island on the morning of the riot, he knew William Kenny, Witness saw Kenny's party gathering stones, he saw Kenny himself throwing a stone, and saw his party throwing stones down the hill at Lunny's party he saw one of Lunny's party knocked down with a stone thrown by Kenny's party, he did not know the person that threw the stone, but the name of the man knocked down was Redmond M'Manus, he did not see any more stones thrown, there was then about twenty with Kenny, shortly after he heard some shots fired, there were two or three shots fired, some of them took effect, several of Lunny's party were wounded, the parties had given over on both sides, and when Kenny's party came down the hill to the meadow, he saw one of them present a gun, and fire at Lunny's party, they were not then fighting, it was on the field he fired the shot, and a boy of the name of Reilly was wounded in the thigh, he saw the red blood running from the wound, after that firing, he saw five or six fellows coming with guns, they were not the same persons he saw in the potatoe field



*Cross examined by Mr Scholer.*

Witness came from Kennawly near Swanlinbar, he can't exactly tell the distance from Swanlinbar, he lived about two miles from Innishmore he went to see the challenge, and wished to speak to Lunny to make up the quarrel, he spoke to Lunny, who told him he would rather have a ring, he was at a wake the night before the fight, and it was there he heard tell of the challenge, and curiosity brought him from the wake to the island, there were a great many boys at the wake, but there were only two or three of them that accompanied him to the island, Reilly went with him, he had a stick in his hand, he did not go to make peace, nor did he go to fight, he saw a man carried away out of a field, he heard he got the blow on the head, in the fight, that killed him, to the best of his opinion, there were some shots fired before the man was carried away he belonged to the Catholic party he saw Kenny's party fighting in the potatoe field, he heard Kenny challenging the men to fight, he saw him stripped, and heard him say, "that he was the very fellow that would whack him," he saw afterwards some of Kenny's party going towards Kenny's house, he saw some more of them running away, and some of them turning back and fighting some of Lunny's party came round the hill before the fight, in the cot coming over with Witness, there were three men from Monteagh there were upwards of twenty of Lunny's party, on his oath, there were not one hundred, he knew the prisoner Andrew Cassidy, he is not a Monteagh man, some of the Prisoners might have been there, but, by virtue of his oath, he did not see any of them at the place where the fight commenced, he did not see John M Connell there, nor did he recollect seeing Denis Rooney or Patrick M'Manus, he saw Michael Maxwell and James Breslin.

*James Keenan examined by Mr Rolleston*

Witness said he was at Innishmore on the day of the fight, he saw William M'Creery there, he saw him fighting with a stick, he did not know whether the stick was blackthorn or hazel, he saw him striking in the fight as other persons did, he saw the deceased strike Thomas Rooney behind his back on the head, the stick was like any other staff, Tom Rooney was fighting at the time with a man *the big Trimble*, the fight was then going on, he saw the deceased strike other men, but Witness did not know them, the deceased was actively engaged in the fight

*Cross-examined by Mr Deering.*

Witness saw every other man there was actively engaged, he did not see Tom Rooney since that day, he did not know that Tom ran away for fear of being hanged, it was to help

*Thomsy* Witness came from Monteagh, Tom's father is brother to Denis, Denis was there, he did not see Andrew Cassidy there, he saw Michael Maxwell there, there were many from Monteagh there, he crossed the ferry, there is a ferry between Innishmore and Monteagh shore, he saw but one cot, on the night before the fight, he heard the challenge spoken of, and the boys were to go there, every one of them had cudgels, some had ferules on them, his party were well prepared, and so was the other party, Witness did not see the deceased knocked down, he did not think he was killed by his own party, he did not see Michael Maxwell or Redmond Rooney doing any thing.

*Ralph Keenan examined Mr. Rolleston.*

He was at Innishmore on the day of the riot; he saw the Lisbellaw men making preparations for the fight, he saw one man of them loading a gun he saw another man whom he knew, of the name of Montgomery, loading a gun, it was on Monday morning, he saw them doing nothing but load the guns, it was on ——— hill, one Andrew Montgomery, and one Noble, the fight was over then, Witness was not at the fight

*Catherine Cassidy examined by Mr. Doherty.*

Witness said she was the sister of Andrew Cassidy she recollects the day of the fight at Innishmore, on the night before, she slept at her brother's house, at Macon, it was from two to two miles and a half from Innishmore she saw him rise in the morning of that day about five o'clock, and going to his work, he was employed burning ashes, and he remained in her view from that time, till he was called to his breakfast, she was sitting at the door sewing, he was in her view from the time he got up till evening, when he took his breakfast, he went out again to his work, and was not out of her view till two or three o'clock, by virtue of her oath, he was not in Innishmore that day

*Cross-examined by Mr. Lyle*

Witness said she did not live with her brother, she had been at service in a country farmer's house, she left her service a short time before that day, the wind might blow the smoke about the fires, to prevent her seeing her brother, the island is about a mile and a half from her brother's, they had a view of the island of Innishmore from the house, the servant maid, Hannah Campbell and her brother's wife, were in the house on that day, she could swear positively, that the Prisoner (her brother Andrew) was not so long out of her view, on that morning, as to go one mile without her knowledge

*Hannah Campbell examined by Mr. Rolleston*

She knew the prisoner Andrew Cassidy, she recollected the day of the riot at Innishmore, at an early hour on that morning she had occasion to go to Cassidy's house, when she came there, she saw him lying in his bed, she then saw him going to his work, between five and six o'clock, he was burning ashes, she saw him come to breakfast, she saw him go back again, and saw him working at the ashes till the men came home from the challenge, she was standing without, looking at them coming home from the challenge, she saw the Prisoner working all the time at the ashes; she heard the first Witness (Anne Stewart) say, "that she would have the life of the Prisoner, if it would go for seven years, she would have his life taken either in Duniskillen, or in Swanlinbar, or in Stragowna."

*Cross-examined by Mr. Johnston.*

Witness said she was looking at the fight from the hill, Innishmore Island is about a mile and a half from Cassidy's, she is the next neighbour of Andrew Cassidy, she went to his house about five o'clock, she asked him how he was, she went to Cassidy's for milk, it was day-light then, the sun was up; it was rather a dark morning, she staid looking at the men going backwards and forwards in cots, she did not know them all, some of them came up to their place, she can't tell where they came from, they appeared to be strangers, she did not give her children their breakfast till all was over, the milk was not ready for her, she did not fetch the milk till all was over, she was standing on the hill, and many others were standing with her, she takes her breakfast just when it answers her, her husband was at the challenge, she can't tell whether Anne Stewart swore against her husband, she heard her say, "she would be revenged of Cassidy, she would have his life taken either in Duniskillen, or in Swanlinbar, or in Stragowna," it was last summer was a twelve month she had this conversation with her, he and she met in Witness's house at that time, she swore she would be revenged, they had a dispute, it was something about her giving information against a still, they were wrangling about it, and Witness heard Anne Stewart say, "she would do the job herself, but she was then with child."

*Anne Stewart called*

Question by the COURT to the Witness—Q Where did Anne Stewart live? A Witness said she lived for a short time in the lands with her—that is the woman there (pointed out Anne Stewart).



Q Repeat the words you heard her use on that occasion  
A. Witness repeated the conversation as above stated.

Q Anne Stewart, did you make use of those expressions?  
A *Anne Stewart*, Wait and I will tell you what passed, I told him it would not go so easy with him if I was not in the situation I was then in, he followed me up the hill, when he saw me, and called me a damned hag, and abused, and I told him, only the way I was in I would not let it go with him, I said I had friends living in Enniskillen and Swanlinbar, but did not say she would have his life.

*Norah M'Manus examined*

Witness said she knew Andrew Cassidy, and she knew Anne Stewart for some time.

Question by Mr *Johnston*—Q Did you hear Mrs Stewart say any thing about Cassidy? A I heard her saying, "that if it would go for seven years, she would be revenged of him"

*Cross examined by Mr. Boyd.*

Q. Did you ever hear that Anne Stewart had charged your husband with being one of the rioters at Innishmore? A She could not do that, for my husband was not there at all, my husband is not at home

Question by the COURT—Anne Stewart you have heard what this woman has sworn, is it true? A I did not say so, as I recollect, I had a conversation with her in her house, she was making a coat for me, but I don't recollect that I said any thing about him, he had given her abuse before that, if I said so, I don't recollect it

*Patrick Carron examined*

This Witness corroborated the evidence of the two former. Witness said he had seen him at an early hour in the morning, that he asked the Prisoner to come and set potatoes with him, he was working for himself, burning ashes, and was in Witness's view till after the people came from the fight at Innishmore

Two Witnesses, *John Carroll* and *Fanny M'Caffry* proved an alibi for the prisoner *Pat M'Manus*

The last Witness swore positively that the Prisoner was clamping turf, and was not out of her view from five o'clock in the morning until the persons returned from the fight at Innishmore

Here the case closed on both sides

## THE JUDGE'S CHARGE.

GENTLEMEN OF THE JURY,

The Prisoners at the Bar are on trial for their lives, they are indicted for the murder of William M'Cleery, at Innish-

more, in this county, on the 20th of May, 1824, in consequence of injuries inflicted upon him, on the 17th of the same month. The means of his death are imputed to a blow given him on the head by a person of the name of Thomas Rooney, or by some other person or persons unknown, who are not, as yet, rendered amenable to justice.

Gentlemen, if you are satisfied by the evidence, that the deceased came by his death, in the manner, and at the time laid in the Indictment, and that the Prisoners were participators in the crime, it is immaterial whether the wounds he received were inflicted by persons unknown, or by the person charged with having given the mortal blows.

Gentlemen, I shall state to you, at once, what I conceive to be the legal principles referable to a case of this nature, in order to enable you to make a just application of the facts to the law arising from them.

Gentlemen, it appears to me, that nothing has been given in evidence to satisfy you, that the Prisoners had entertained any previous malice or ill-will to the person deceased, and, therefore, in my opinion, this case is distinguished from the ordinary cases that occur in society, where one man puts another to death from a pre-conceived intention with malice prepense. There appears nothing in this case of that species of express malice proceeding from the minds of the Prisoners.

Gentlemen, generally speaking, if a man, or men be engaged in the commission of that which is forbidden by the law, there is a certain degree of responsibility attached to the person or persons implicated, according to the extent of the mischief of his or their acts. But the extent and magnitude of the punishment which the law visits on them, must, in all cases, be governed by the consideration of whether the crime was committed intentionally or otherwise. It is my duty to tell you, the mere slaying of a man may be either criminal, or not criminal, or criminal in a greater or less degree, according to the circumstances of the case and the intention of the parties. An involuntary killing of a person is not a crime punishable by law. Every species of homicide that is criminal in contemplation of law, must be voluntary, or must flow from a voluntary intention, or from an act done in violation of law, the criminal intention must correspond with the act. Generally speaking the will and the deed must go together, it is the act and the evil intention that constitutes the crime of murder.

But, Gentlemen, there is, however, another description of cases amounting to the crime of murder, for instance, where one man slays another without any previous intention, the law will imply malice from the wicked and atrocious nature of the act, where the perpetrator of the crime is regardless of human life, and fatally bent upon mischief and upon this principle

a case of murder may arise from the killing of a stranger, or where there is no intention of putting a person to death, as for example, in a case where men are occupied in the pursuit of some unlawful purpose. In such a case, although the party did not meditate the commission of homicide, yet, if whilst he is engaged in such unlawful pursuit, he should occasion the death of a fellow creature, he is deeply responsible to a certain extent for the crime of murder.

Gentlemen, if a man be in the prosecution of committing a felony, it is a high aggravation of the offence of homicide, as for instance, breaking into a house to rob it, if death ensued, in that case the crime would be wilful and deliberate murder, because the law would imply malice.

Gentlemen, another principle which applies here is, that in point of law, every homicide is presumed to be done with a malicious intention, until the circumstances arising from the evidence, explain and prove the contrary.

But, Gentlemen, there are deaths occasioned by officers in discharge of their public duty, which the law not only excuses but justifies.

[Here his Lordship explained to the Jury the principles which distinguish the cases of manslaughter, and excusable and justifiable homicide from murder.]

Gentlemen, in this case, it is my duty to tell you, that a riot and an illegal assembly occurred, that in this riot the deceased received the injury that occasioned his death. If you are of opinion that the blows were given under the impression of passions suddenly excited by the general affray, you will find the Prisoners guilty of manslaughter. If you think that the Prisoners were actuated by previous malice, and had combined together to take the life of the deceased, you will find them guilty of murder. If men take part in a riotous and illegal assembly, and a sudden and general quarrel ensues, if in the fury and madness, and demoniac spirit which actuates the combat, a life be lost, the law making an allowance for human infirmity, acting under the excitement of heat and passion, mitigates the crime to manslaughter.

Gentlemen, if you are satisfied that any of the Prisoners were present, and were engaged in the general riot, in which the deceased lost his life, your verdict should not be less than that of manslaughter.

It is only in supposition of your believing that they were not present, or in your having a rational doubt, arising from a due consideration of the evidence of their not being present, that you can acquit them.

His Lordship then recapitulated the evidence, and commented with great force and perspicuity on such parts of it as were applicable to the case.



He said the first Witness, and the most important one produced on the trial, was Anne Stewart

The Jury would determine from her evidence, whether there was any circumstance of premeditation or concert on the part of that party which were opposed to the Prisoners. She stated she was in Kenny's house on the night preceding the day on which the challenge was to be fought. That she saw a gun taken down by some of the family, and that they were "either charging, or uncharging it."

It seemed manifest from the testimony of this Witness that both parties had formed the design of meeting for the purpose of taking part in the riot which took place on the next day, and in which the deceased lost his life. He did not charge the Kennys with any intention of committing homicide. Perhaps they were merely preparing to repel force by force, but had the life of any of Lunny's party been taken by the Kennys, charging the gun on the night before would be evidence of the intention of that party.

His Lordship then stated minutely the evidence of the witness to the Jury.

Mr *Wm. Armstrong* was the next important Witness whose testimony was material for the particular consideration of the Jury.

This respectable man who exerted himself so much for the preservation of the peace, had stated that the riot consisted of a general combat between the two parties and not only a voluntary, but an invited combat on the part of the Kennys. That shouts of defiance, and provoking menaces, and invitations to fight came first from Kennys party, and that stones were thrown by all parties. This evidence was most essential in point both of law and fact, and was different from the testimony of all the other Witnesses produced to sustain the prosecution. If both parties entered into a voluntary combat, under the circumstances as stated in the evidence of Mr Armstrong, it would change the complexion of the case, as to the deliberate purpose of the Prisoners of committing homicide, it was a fact admitted by all the Witnesses, that the Prisoners had no arms, and that the party opposed to them had some arms in their power, and other forces had arms at their command—therefore his Lordship thought that the fair inference to be drawn from these facts was, that although the Prisoners could not have been guilty of a crime less than Manslaughter, yet that their having entertained a deliberate purpose to commit murder was out of the question.

The Learned Judge concluded his observations on the evidence of this Witness, by lamenting, that in no one instance that had come to his knowledge since the commencement of the present Assizes, did it appear to him, that any Gentleman

of influence or authority in the country had ever interfered to put down those party dissensions, except in this case, in which Mr Armstrong had so laudably endeavored to preserve the peace. Here the common people at fairs and markets, some armed with sticks and stones, others with guns and bayonets, were permitted to fight out the battle themselves at all hazards. In this instance, the influence of one discreet man had nearly prevented the unlawful rioting of those infatuated people, and saved the life, of, perhaps, a respectable member of society.

He had omitted to state, that Mr Armstrong had given a good character of Denis Rooney, with the exception of having a disposition to quarrel. And with respect to Redmond Rooney, the character given of him was of great importance, and should be attended to. Mr. Armstrong was not more than one hundred yards from the place of combat at the time the deceased received the blows that occasioned his death.

His Lordship then proceeded to state and observe on the facts given in evidence by the remaining Witnesses, and concluded his Charge at about one o'clock on Tuesday morning.

The Jury, after a short deliberation returned their Verdict—Guilty of Manslaughter.

*Sentence passed on the Prisoners,*

Denis Rooney, to be transported for life.

Redmond Rooney, to be imprisoned for eighteen months.

Andrew Cassidy, to be imprisoned for eighteen months.

Michael Maxwell, James Breslin, John M'Connell, and Pat. M'Manus, to be imprisoned twelve months.

The Learned Judge not having had time to proceed with the trials of the indictments for the Riots and Assaults at Ederney and Innishmore, adjourned the Assizes to Thursday, the 26th of August.

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## ADJOURNED ASSIZES OF ENNISKILLEN.

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THURSDAY, AUGUST 26

The Court met pursuant to adjournment.

William Carlton and Owen M'Ilmurry, were indicted for the Murder of William M'Creery at Innishmore, in the County of Fermanagh, on the 17th of May last. There were two other counts in the indictments. The first charged the Prisoners with aiding and assisting one Thomas Rooney, the Murder to do and commit, &c

And the second charged the Prisoners with having aided and assisted a person unknown

The Prisoners pleaded Not Guilty, but refused to join in their challenges.

By the directions of the High Sheriff, it is presumed the Panel was so much improved since the Assizes held on the 6th instant, and the persons called on the Jury so respectable, that the Prisoners did not, although allowed forty peremptory challenges, object to more than one or two Jurors

There was not a single Catholic empanelled

*Richard Cluff examined by Mr. Solicitor.*

Witness said he knew William McCreery, he is dead, he recollected having been on the lands of Clintcoragh in May last, he lived in the Island of Innishmore, he saw a party of men there on the morning of the 17th of May last, he first saw them when he went to the place where the two men were to fight, he heard on the evening before there was to be a fight between John Lunny and Wm Kenny, Witness did not go to the fight for the purpose of taking part with any side he had no intention of going, for he thought, on seeing Mr. Armstrong there, there would be nothing about it, he saw two or three men going to make it up, he saw some of the parties throwing up their hats, he saw stones thrown at the persons going up to Kenny's to make it up, he cannot tell the persons that threw them, next after wanting to settle it he was in the meadow in the fighting ground, striving to keep them back, he thought he had great influence with Kenny's party, but could not prevail on them, he next saw a large party of men coming round the shore from Monteagh, they came on towards Lunny's house, and joined Lunny's party in the meadow, he thought, to the best of his knowledge, there might be about sixty, he saw some of Kenny's party there, about five or six in the meadow, Lunny's house was about one hundred piches from the meadow, he supposed there might be about sixty men at Lunny's house, when the men in Kenny's house were joined with those in the meadow, they amounted to about thirty, Witness had not seen the deceased at that time, but saw him after, he saw Lunny's party pursuing Kenny's party up the field, and as soon as they overtook them, they laid on them as fast as they could, when they overtook them, they were in the potatoe ground, he saw stones thrown, he saw blows given by Lunny's party, he heard Lunny's party calling for the Lisbellaw blackguards, and saying they would not leave one of them on the ground, he was about the middle of the potatoe ground, he was struck there several times, he would know the people that were there, he saw Wm. Carlton



there, (identified the Prisoner) he was positive he saw him, he saw him at the time the fight was nearly over, he had blood on his forehead, he saw him strike a man with a stick, when four others were beating the same man at the time, he cannot tell who the man was, he seemed to be making his escape at the time, Witness said, he had seen Carlton once or twice before, he is certain he saw him before, he saw him at different places, at a cock fight, at a wake, and at Enniskillen, but supposing he had never seen him before, he would know him now

*Cross-examined by Mr Rolleston*

Q Mr. Cluff, was there not a trial for the murder of Wm M'Creery, the deceased, at the last Assizes, on the 6th of this month? A. There was

Q Are you certain of that? A. I am sure there was

Q Were you here, Mr Cluff? A. I did not give any evidence on the table, I was called by the Grand Jury

Q. Why did you not give evidence? A. I don't know, I was not examined

Q. What side did you belong to? A. I did not belong to any side, until I was struck first; but when struck, he did belong to one side, he then struck those about him in his own defence, I did not throw any stones, but saw stones thrown

Q. Did you not tell the Jury there were no stones thrown but by Lunny's party? A. I heard the other side threw stones

Q. Did you tell that respectable Jury that Kenny's party gave a single blow, or threw a stone, why did you suppress the truth? A. Because I was not asked it

Q. Did you not think it your duty to tell the whole truth? A. I told it to them now

Q. What notice of the challenge did you receive on the night before? A. I heard it the night before in Barney M'Caffry's, Mary M'Caffry and Jane Nugent were speaking about it, and I heard it again when I went home from a journeyman weaver, who was the first that told it in his house.

Q Did you tell the journeyman you would attend? A. I did not agree to go on the next morning, but I went out of the house at an early hour to look at the cattle, by myself, after that I just went over the hill, bit by bit, till I went to the spot, it was as a usual thing for young people to go and see the like

Q. Where did you get the stick you handled so well? A. I got it on the ground

Q. Who gave it to you? A. I got it from a cub, I did not know his name, after I got it, I did my best to knock down several with it

Q. Who did you knock down? A. I am not bound to tell you

Q By virtue of your oath, how many did you knock down?

Witness — Please your Lordship, am I bound to answer that?

Court — You are, Sir.

Q When you all got in the field there was a general quarrel?

A There was

Q Did you see the Prisoner bleeding, was he cut on the forehead? A I do not know who cut the man, the blood might happen to come off another, I heard he was bloody hitting a man, I don't know whether the man was cut or not.

Q On your oath, where was the first place you ever saw the Prisoner? A I don't know, I believe it was at a cock-fight at Shanmullagh, he had no blood on him there, I don't know where the Prisoner lives

Q Who introduced Carlton to you at the cock-fights? A I don't know, some men in company

Q On your oath, from whom did you inquire his name? A From some men in company, I can't tell from whom.

Q My dear Sir, why did you inquire, why were you then so anxious to know poor Carlton? A Why, seeing men in company, I wished to know who they were.

Q There were other strangers to you in company, did you inquire about them? A I can't say now whether I did, I can't say who they were.

Q You could not have been deceived about Carlton in Inishmore, seeing the blood on his face? A I could not, I am as certain of seeing the blood on his face, as of seeing him at the cock-fights, I rely on one as fast as the other.

Q There was some person pointed him out to you at the cock-fights, and said, there is Mr Carlton, who was that person, on your oath? A I am not certain, I think it was a son of Hugh Armstrong's

Q Where did you see the Prisoner the second time? A In this town, in Mr Terry Mehan's with a boy of the name of Frank Carlton, I cannot tell the time

Q Were you acquainted with him? A I never spoke to him

Q Where did you see him the third time? A I don't know where I saw him the third time, I believe it was at a wake at Hugh Armstrong's

Q Who was dead? A I believe she was one Pogue

Q Where did Mrs Pogue live? A I don't know the name of the townland, I went there with some of the neighbours

Q What were the neighbour's names? A I went with one McCait and some others, I saw the Prisoner in this town after the wake, I did not speak to him at the wake

Q Did you make any inquiries about him there? A I asked one McAspiril who he was

Q My dear Sir having asked for him before at the cock-

fight, why ask his name a second time? A Because many a one asks the way he went before.

Q. Who did you tell this story to before you came here, when did you tell it, and to whom? A. I don't know whether it was more than a week, till I see, I told it about three weeks after the Innishmore fight, I was sure of him then, and am sure of him now.

Q. To what Magistrate did you complain? A I told it to Mr. Gabbett, the Provost, three weeks after.

Q. Why go to Mr. Gabbett? A. Because it was there that all the examinations were lodged against the rioters

Q. Did Mr Gabbett grant a warrant at that time against the prisoner Carlton? A He did not.

Q Havn't you heard that a conditional order for a criminal information has been granted by the Court of King's Bench against Mr. Gabbett, and an affidavit sworn by the prisoner Carlton?

Mr. Deering objected to the question as irrelevant to the trial at issue.

Mr. Rolleston.—I shall not press the question

Q You went to Captain Gabbett to lodge information? A. I went to Captain Gabbett and told him I saw this man, William Carlton, there, at the fight, this happened about three weeks after.

Question by the COURT.—Did you inform of all you knew about the Prisoner, respecting his being at the fight? A I told him all what I am telling now.

Q Did you lodge informations then? A No

Q Nor Mr. Gabbett did not then require you to swear informations? A No, he did not.

Q. Do you know whether the Prisoner was in gaol at that time? A. I think he was not then in gaol, but I cannot say positively.

Q. Where was he? A I cannot say where he was

Q. Can you form a belief? A I don't know whether or not, I heard he had been in prison some time before that, I don't know, but I believe he was discharged out of prison

Q Who sent for you to swear examinations, was it Mr. Gabbett? A. No, Mr. Gabbett did not send for him

Q Who sent for you, so long after the fight? A It was a cub came for me, his name is Tommy Kenny, he asked me if I knew such a man as Wm Carlton.

Q On your oath, do you know whether the cub was sent by Mr. Gabbett?

Mr. Deering —My Lord, with great respect, I do submit to your Lordship that this mode of examination is illegal. I consider it as involving a question quite collateral to the issue the Jury have to try Mr. Gabbett is not on his trial now



Mr Justice MOORE.—Mr. Deering, I disagree with you with respect to the legality of the question, I am to look on this case as on any other. Suppose a conspiracy were formed against the Prisoner, should he not be allowed to give evidence of it?

Mr. Rolleston.—I avow that this case, which your Lordship is now trying, is, in my opinion, a most abominable conspiracy, and I know I have a right to ask by whom this cub was sent to the Witness.

Q Where did the messenger bring you to? A. No place, he asked me, did I know such a person as William Carlton.

Q. And then you went off to Mr. Gabbett—didn't you? A. I went to Mr Gabbett, when it served me.

Mr Justice MOORE.—Witness, you are not to answer questions in that manner, recollect that you are on your oath.

Q What did you tell the messenger? A. I told him I believed I knew him, I told Kenay I believed I had seen him.

Question by Mr Rolleston —Do you remember any thing more? A. No, I went of my own accord a second time to Mr Gabbett.

Q Did you swear any informations then? A. I swore nothing at that time.

Q When did you swear against the Prisoner? A. When Mr Galbraith and Mr Blackburne came down to take a statement, then we all came in, we were all brought in to tell what we had seen and known about it.

Question by the COURT —Who went for you then? A. I don't recollect, we were all brought in to tell what we knew, this is the time they were sworn on the business, it was after this I came in and told Mr Gabbett I saw Carlton at the fight.

Q Do you mean to give us to understand, that you never took an oath charging the Prisoner with this offence, until you were sworn by the Grand Jury? A. No.

Q Did you ever swear at any one time, or at any place, against the Prisoner? A. Oh! yes, at Captain Gabbett's office above, I swore about the riot, but never against the Prisoner.

Question by Mr. Rolleston—Had'nt you sworn two informations, one since you swore about the riot? A. It is not that I mean at all, man.

Mr. Justice MOORE.—Come, come, Sir, quit your mumbling and prevarication, and answer the questions.

Mr. Rolleston —You see how it is, my Lord.

Q. Did you swear more than one information? A. I swore two informations, but not against the Prisoner, Hugh Montgomery took my examinations in Sam. Bently's, in this town.

Q. Who was the next resident Magistrate to where you live? A. The next Magistrate I believe, is the Rev. James Auchinleck.

Q. Who next to him? A I believe, Mr Denham

Q Mr. Richard Dane is next—do you know him? A I do, Mr. Dane is nearer than Captain Gabbett

Q. Then, Sir, explain to the Court and the Jury, why you went to Captain Gabbett, in preference to all those other Magistrates? A It was here to this town the whole set came for examinations.

Q Why did you not go the next morning? A There was no examinations taken till the man died.

Q Why did you not go for three weeks after the man died—what kept you so long? A I was minding my work, I went to Captain Gabbett a few days after I had the conversation with the boy (Kenny)

Q. By virtue of your oath did you ever think of swearing informations against the Prisoner, until Tom Kenny inquired if you knew Carlton? A. I did, but did not wish to bring myself into trouble

Q You talked of a wake, where you had seen the Prisoner, where was the wake? A I cannot tell the townland

Q Can you tell the parish? A I cannot tell in what parish the wake was in, it was near Hugh Armstrong's, it might be about four miles from where I live, I live in Innishmore Island; about the middle of it I know Mr William Armstrong, he is a respectable gentleman

Question by the COURT.—Did you see Mr Gabbett before Tom Kenny called on you, and inquired about the prisoner Carlton? A No, I did not

Q. Why did you let three weeks elapse? A. I suppose it was three weeks at the time I told him

Q. What induced you to go to Captain Gabbett? A I went of my own accord, I came into town here on the day they were getting examinations, they told me at the island they were going to get examinations, Tom Kenny asked me if I knew any thing about Carlton, I had business in town, and called on Captain Gabbett

Q Did he ask you any questions about the Prisoner? A Yes, he asked me if I could prove any thing about Carlton, I believe he did.

Q You heard the question, Sir—what do you believe? A I do believe he did.

Q. Were you invited to swear against any other person? A Not at that time, I swore against Anne Lunny, and did not swear against any one else at that time

Q Why did you not swear against the men as well as against the women? A I swore against the women and not against the men.

Here the Judge read a part of the Witness's evidence, as stated in his informations, which the Reporter did not distinctly hear.

Q Did nt you swear \* \* \* \* ? A I did not.

Mr Justice MOORE.—I have read it for you, Sir, from your informations, and your credit will go to the Jury

*John Pye examined by Mr. Deering*

Witness said he lived beside Lisbellaw he was in Innishmore on the morning of the 17th of May last, he was examined as a Witness at last Assizes, there were a great number of persons assembled on that morning, he knew the prisoner, William Carlton, and saw him there, he heard there was a challenge, and he just went to see it, it was to be fought in Parkbawn meadow, the challenge was not fought, he knew William M'Cieery, he is dead, Witness was standing within a yard of Tom. Rooney when he struck the deceased, he struck him one blow on the head with a stave, and two on the body, he saw a man of the name of Phair struck, he had no doubt that Carlton, the Prisoner, struck Phair—[identified both Prisoners],—and when he was down, M Ilmurry, winding his stick, and ordering his party to lay on, he was calling on them to smash the Lisbellaw men, on the Thursday following deceased died.

The remainder of Witness's direct evidence did not vary essentially from that given by him on the trial of the *King v. Rooney and others*, at the last Assizes.

*Cross-examined by Mr. Dogherty*

Q Where do you live ? A Beside Lisbellaw, I can't tell how far from Innishmore, it may be four to five miles

Q. Who invited you to the challenge ? A One of the boys, named Carroll, who lives near him

Q When ? A Coming from Church

Q. What time ? A. I can't exactly tell, I think, my Lord, it makes no difference whether it was at morning or evening service I first heard it, the Rev Mr. Auchinleck performed the morning service, he is the man that preaches

Q. Who performed the evening service ? A I can't say who performed divine service in the evening, there are different other Clergymen come there some times

Q Did any different gentlemen come to the Church on that Sunday evening ? A There might have been another different Clergyman there on that evening

Q There might have been—was there ? A [Oh ! that question has nothing to do with the case

Q Where did you spend that evening ? A. I spent the evening mostly in my own house

Q. In which of your neighbour's houses did you visit ? A I can't tell now in what neighbour's house, nor can I tell in how many I called that evening



Q Did you visit your friends in the town? A. I don't think I was in the village of Lisbellaw that evening.

Q How many men had you a conversation with that night? A. I cannot tell.

Q At what hour did you and your company march to the island next day? A. I went to the island about the break of day next morning, and some of the neighbouring boys with me.

Q Among your party, did the deceased, William M'Creery, make one? A. William M'Creery came with me, I met him on the road, at his own house.

Q A great many more went with you? A. There did, about twenty or thirty, but some of them were boys.

Q What arms did you carry? A. I had a stick in my hand, on going into Innishmore, I went first to Kenny's house, we crossed the Corry bridge, and had no occasion for cots.

Q Did you see any guns with your party? A. I did see guns on that day.

Q. Mention the names of the persons with whom you saw the guns? A. I don't recollect, but I did see guns on that day.

Q On your oath, did you see guns in the morning? A. I don't recollect.

Q On your oath, did you see a gun with Kenny's party before the challenge began?

The Witness gave several evasive answers to this question.

Q. (By the COURT) Sir, you know the question perfectly, but you don't wish to answer it. Answer me—by virtue of your oath, did you see a gun with any person, or at any place before the challenge commenced? A. No, I did not.

Q. (By Mr. *Dogherty*) Did you hear of several persons being wounded by the firing of guns? A. No, I did not—(after taking time to consider)—no, until I heard it read out of the newspapers.

Q. When did you lodge informations? A. I did not at first lodge informations against the man that struck myself.

Q When did you first lodge informations against the Prisoners? A. I lodged them the same time as against the persons that struck myself.

Q. When and where did you first charge the Prisoners—you must give an answer to this question? A. It was at the last Sessions, it might have been about the 24th of July last I lodged examinations against the Prisoners, I then lodged examinations against the man that struck myself.

Q You had seen the Prisoners after the riots, and before the Sessions? A. I saw them in the Bar, at the last Sessions.

Q Did you not see them in gaol after the riots, and before the Sessions? A. They might have been in gaol.

Q (By the COURT ) I think you swore before, that they were in gaol—did you see them there after the riots, and before you lodged informations ? A. They might have been in gaol, I heard they were in gaol.

Q. On your oath, did you or did you not see them there before the Sessions ? A I might, but I don't recollect it, I think I did not

Q What business had you in the gaol ? A. I went to swear against Denis Rooney.

Q Did you or did you not see the Prisoners there ? A I saw several of the Prisoners

Mr. Justice MOORE.—I do not like to observe on the evidence of any Witness during the time he is giving his testimony but certainly what I seen and heard this day may very much influence my future conduct with respect to the persons who have already been convicted at the late Trials at the Assizes.

Q (By the COURT ) Did you ever go to Enniskillen gaol for any purpose, after the riots at Innishmore ? A. I did, I went to Enniskillen gaol of my own free will and accord, I was inside the walls. and I went to identify Denis Rooney.

Q What Magistrate took your informations ? A. I *disremember* what Magistrate, Mr Gabbett, and the Rev John Auchinleck was there, I don't know which of the Magistrates administered the oath, or which of them gave him the book in his hand, I am certain it was on the 17th of May last I was sworn

Q (By Mr *Dogherty* ) Did you charge the Prisoners then with being concerned in the riot ? A I did not say any thing against them on that day.

Q. Did you complain against them to Mr Gabbett, before the Sessions ? A I did not.

Q How soon after you lodged informations in the gaol, and before the Sessions, did you see Mr. Gabbett ? A I was at Mr. Gabbett's house once or twice, after and before the Sessions.

Q. Why did you not think of lodging informations then against the Prisoners ? A I did not complain to him then.

Q. How often did you go to his office, before the Sessions ? A. I might have been there several times, I saw him often, I went to his office, and I had business there

Q Had you not heard that the Prisoners were to be tried for a riot that happened on the 17th of May, at the Sessions ? A Yes, they came to be tried by a man of the name of Isaack, for assaulting him.

Q Who asked you to go to the Sessions ? A It was my self, I went to swear against those men

Q Those men had put off their trials, and were going to be discharged by the Assistant Barister, on bail, before you thought of swearing against them? A I did not hear they were, I told some boy in the street, that I came to swear against those men, Mr Johnston Hamilton drew his informations

Q Did you speak to the Provost on the subject of your lodging examinations on that day, before the application was made to put off the Prisoners' trials? A I might have said something to him, and he might have heard I was going to swear against them

Q Captain Gabbett had the same power of taking your informations—why did you not lodge them with him? A I think he is as good a Magistrate as any other

Q Denis Rooney had before that time sworn an assault against you? A He had.

Q (By the COURT) Denis Rooney had sworn against you before that day? A He did.

Q In the morning of the day that you came to the Sessions, did you mention to any one, that you intended to swear against the Prisoners? A I told it to Johnston Hamilton.

Q Were you in the dock among the Prisoners, at the Sessions? A I don't recollect that I was in the dock, but I stood near it during the day

Q By virtue of your oath, did you communicate your intention to Captain Gabbett on that day respecting the Prisoners? A I had no call to Captain Gabbett

Q You and he had frequently met—recollect the Sessions was three or four months after the riots? A There was very seldom he met me in the street, he did not speak to me

Q Had you not a conversation with him, Sir, on that day, after the Prisoners applied to have their trials postponed?—[Witness did not give a direct answer, and the question was put several times]—A I can't recollect

Q Were you not sworn, Sir, in this Court, on that day, and after that time, against the Prisoners? A I was minding my own business.

Q Were you sworn, Sir, here on that day? A I went with Mr Auchinleck, the attorney, to the Magistrates, they swore me in a room there, (pointing to the Judges' chamber) off the Bench

Q Did you then tell the Magistrates that you had not sworn against the Prisoners since the riots at Innishmore? A I did not, Capt Gabbett was not there

Q Who were the Magistrates? A A Captain Archdall and Major Armstrong

Q By virtue of your oath, were you not speaking frequently to Capt Gabbett on that day, before you went before



those Magistrates? A The Captain did not desire me to lodge informations on that day against the Prisoners.

Q By virtue of your oath, did you ask him to take your informations on that day? A I do not know, I don't recollect

Q Had you any conversation with him, Sir, I will ask you again, about the Prisoners, and what was it? A. I might have spoken to him, I would speak to him.

The Witness refused to give a direct answer

Q. (By the COURT) How came you not to swear before Captain Gabbett that day?—No answer

Q. Do you mean to say, that all that passed between him and you on that day, was merely bidding him the time of day?—No answer for a considerable time.

Mr Justice MOORE—Witness, I must tell you, that your conduct, to say the least of it, is extremely indecorous, and take notice, Sir, that if you persevere in it, I shall take a very different course with you, I must, and I will, put the law in force

*Witness.*—I don't recollect, my Lord, what I said to him before, but I recollect I told Captain Gabbett, after I came out from the Magistrates, that I had sworn against two men that were in the riots at Innishmore.

Q (By the COURT) Where did you tell him this? A. I saw him in the street, and I went up to him, and told him.

Q. For what reason did you tell him then? A. I had no reason.

Q. How many examinations did you swear before that? A. I will tell your Lordship.

Q. Is not that an easy question, why hesitate about it? A I swore before Major Armstrong another time before that, I am sure—I think it was before Major Armstrong.

Q Who did you charge? A. John M'Connell and Denis Rooney, in the gaol, and Redmond Rooney

Q. Why did you not then charge the two Prisoners? A I did not think it necessary

Q. And pray, Sir, why did you think it necessary afterwards? A Why, I thought, my Lord, it was not scarcely worth my while, for the striking of another man.

Q. I wish to know the reason you gave the Magistrates at the Sessions for not swearing before against the Prisoners? A I did not tell them any reason.

Q Did you swear, in your first information, against the three persons in gaol? A. I did.

Q. You swore against M<sup>c</sup>Manus at the Coroner's inquest—why did you not charge him in your informations taken by the Magistrates? A. I did not want to have any thing to do with any but with those that committed the murder.

Q Why, then, did you swear agamst Caulton and M'Ilmurry at the last Sessions ?—No answer

Rooney swore agamst you, and when you found you were charged yourself, you then came forward and charged others. It will be my duty (said the JUDGE) to reflect seriously on the evidence you gave on the former trials

Mr Deering said he wished to ask one question, arising out of the cross-examination

Q You came to Enniskillen on the same day the riot took place, on the 17th of May ? A I did.

Q Do you mean to say it was on that day you first swore agamst Rooney and others ? A I came to town with the Rev Mr Auchinleck on that day, and a party of the military, Captain Gabbett and Mr Spear were in the gaol, and I then swore agamst Denis Rooney.

*John Howe, examined by Mr Lyle*

Witness said he recollected the 17th of May last he was at the island of Innishmore, on the morning of that day, he saw the riot, and knew men that was in it, he saw the deceased Wm M'Creery before and after he was beaten on that day, he saw the prisoner Owen M'Ilmurry there, he was with John Lunny, Witness had a stick in his hand, and Lunny asked him what brought him there, and desired him to go away, he did not wish to see Witness murdered, and every one of you will get your earning on this day, Lunny made this speech before M'Ilmurry and two other men, he believed this happened a minute or two before the fight began, he did not see M'Ilmurry or Lunny do any thing after that, he saw Denis Rooney strike a young boy, they then smashed all that was there of Kenny's party *out of a face*, Kenny's party were making off, he saw William M'Creery after, the life was scarcely in him.

*Cross-examined by Mr Rolleston*

Q. Mr. Howe where do you live ? A I live in Drumevo

Q. How do you earn a livelihood ? A I live by the sweat of my brow. My farm is not large, it is in Drumevo

Q. How long ? A About 24 or 25 years, except 5 years I was out of it.

Q Was it during those five years you were accused of passing forged notes ? A. I never was accused of passing forged notes

Q. What brought you to Innishmore ? A. I went there to see the challenge.

Q. Were you on Kenny's side ? A. I would wish him to win, I went there to do what I could for him, I struck persons on that day.

Q Did you see the Prisoners striking any ore in the general quarrel ? A I did not

Q Would it not be a horrid thing to hang men less guilty than yourself ? A I am not going to hang them

Q When did you tell this story first ? A. The speech was made by Lunny in M<sup>r</sup> Illmurry's presence ; I took good notice of him, I then saw him walking in the street, and then I inquired after him

Q Had you any conversation with Captain Gabbett ? A Yes, I was examined by him, and lodged examinations before him

Q Did you hear this poor man was discharged at the Sessions ? A I think I saw him in the dock at the Sessions

Q When did you lodge informations ? A. I think it was on that day, or on the day before.

Q Where did you meet with Captain Gabbett ? A In the Town hall, *I knew him to be a proper man*, I can't tell at what time I went to Captain Gabbett, but I had spoken to him before that day, and charged Denis Rooney, and one M<sup>r</sup> Manus, and another

Q Did you expect any reward for swearing against the Prisoners ? A I never told Mr. Gabbett I could identify Carlton as having been in the riot, I was not then asked to swear against the Prisoner, I had seen the Prisoner frequently before in the market

Question by the COURT — You swore examinations a second time before Mr. Ainslie, where did you do so ? A At the Sessions

Q Were you there when the Witness Pye was sworn ? A Yes, Pye and I were sworn at the same time

Q Was there any other Magistrate present ? A. Captain Archdall, and I believe Captain Gabbett was standing in the room, I think he was present

Q Are you not certain ? A I think, I can't recollect, but I think he was present at the time, Captain Gabbett told him to get examinations drawn and he would sign them, or send him to a person who would take them *The Captain said something about charging them himself*

*Paddy M Cori, examined*

This Witness in giving his direct testimony corroborated the former Witnesses in their evidence of the prisoner William Carlton, having been one of Lunny's party at the riots of Inishmore on the 17th of May last. He said he saw Carlton at the head of Lunny's party, he did not understand the words the Prisoner said, it was by threats and language he seemed to encourage them, Witness was one of the Guard that took him, and he saw him pulled from under a tick of straw on the day he was taken



Witness on his cross examination said, he had lodged his first information, on, he believed, the 20th of May, to the best of his recollection. In some time after he came back of his own accord and told Captain Gabbett he could identify the prisoner Carlton, and swore informations against him in the month of July.

Witness to several questions put by the COURT, said, he had sworn two examinations—the first on the 18th or 20th of May, before Capt. Gabbett, he did not mention the prisoner Carlton's name in those informations, the reason he did not swear against them till the 15th of July following was, because he was not in town, he did not come to town for two months after Carlton was taken, and he then swore to Captain Gabbett that he saw the Prisoners aiding and assisting I unna's party.

The COURT asked him some questions from his informations, which the Reporter did not hear.

*Isaiah Hunt, examined*

Witness said he knew the prisoner William Carlton, he lived at Godornaghy, at the Bannmanane side of the country, he saw William Carlton on a Monday in May last, he passed Witness on the road between Ballinalee and Tullylummore about a mile and a half from Innishmore, he was then going towards home, it was then between nine and eleven o'clock in the morning there were six or seven person in company with him (if not more), that Witness did not know, Witness heard one of them say to Andrew Beatty that they had beat the Lisbellaw men on that day, Beatty denied it, and said the Lisbellaw men were not beat so easily, they then went on towards Alexander Wilson, in the direction towards Enniskillen.

*Cross-examined by Mr Rolleston*

Q You were a soldier in the Fermanagh Militia? A Yes

Q Do you now belong to the Staff? A There is no regiment now

Q Did you when there was a regiment belong to Captain Gabbett's company? A No, I don't consider him a Captain now, the regiment was reduced

Q Captain Gabbett might have an opportunity of promoting you hereafter? A I never expect any favour from the Captain, if there were a vacancy and he wished to get back, it would be to Lord Enniskillen he would apply.

Q When did you mention this business first? A. About three months ago, when he was sent for as Witness for Mr. Beatty

Q Captain Gabbett took your Information? A Yes.

Q When did you last mention it? A Captain Gabbett asked him about a short time before the last Assizes.

Q. Why did you not come forward and give evidence then ?  
A. If I had been wanted I would

Q. Where is Mr Andrew Beatty ? A. He is dead.

Q. What did Capt. Gabbett say to you before the Assizes ?  
A. He asked me if I had seen M<sup>r</sup> Illmurry and Carlton on the road that day, I told him I did

Q. Were you near the high road when the Prisoners were passing ? A. I was near enough to them to hear their language, on his oath he was afraid of them

Q. You were afraid of them, yet you dogged them, and followed them to Mr Beatty's, is that your evidence ? A. I was before them once, and after them again

Q. Did they strike you, or attempt to strike you ? A. They never struck me, nor did they attempt it

Q. Therefore, you were greatly terrified ? A. I was terrified, he heard them tell Mr Beatty that they would do the same to him as they had done to the Insbellow men

*Robert Isaack, examined by Mr Lyle*

Witness said he knew the Prisoners, he saw them on the morning of the 17th of May between the hours of eight and nine o'clock, they were coming towards Enniskillen, between Ballinaleek and Innishmore, there were about ten persons in company with them, all of them had staffs, Carlton gave his horse a kick when they passed it, they desired him to keep himself up, and mind his ass, and Carlton turned back and pursued him and he made his escape into a field

*Cross examined by Mr Dogherty*

Q. Did you ever tell this story before, and to whom ? A. I told it once or twice, I told it to Captain Gabbett, the next day after they were last brought to gaol I went there to see them

Question by the Court — Did Captain Gabbett tell you to go down ? A. Yes, he told me to go to the gaol, that there were two men committed, and bid me to go and see them, I told the Captain I was going to take them, the Captain did not mention their names to him at that time, I swore informations against them before Captain Gabbett for assaulting me and kicking my masters horse

*John Isaack, Alexander Wilson, Denis Lafferty, John Leith, William Welsh, James Clary, John Monaghan and Jas Binly* were then sworn and examined on part of the Crown, and corroborated the testimony of the two last Witnesses in their evidence respecting the fact of seeing the Witnesses on the road leading from Ballymanone to Enniskillen, and on the public high way, leading as well from Sligo and other public places as from Ballymanone or Innishmore, on the morning of the 17th of May after the fight at Innishmore.

The case for the prosecution was closed at a very late hour

### EVIDENCE ON PART OF THE PRISONERS.

Mr *Wm Armstrong* was sworn to the general circumstances of the riot, his evidence was nearly the same as that given by him on the former trial at the Assizes, in the case of the King against Denis Rooney and others.

The next Witness was the Rev *John Auchinleck*, he was called to contradict some part of *Pye's* evidence.

Witness said that probably *Pye* was under a mistake in swearing his informations were taken by him, he had heard *Pye* examined in the gaol, but there was then no written document before Witness at that time.

Case closed on both sides.

### THE JUDGE'S CHARGE

GENTLEMEN OF THE JURY,

The prisoners at the bar *Wm Carllon* and *Owen M Illmurry*, stand indicted for the murder of *William M Crecy*, at Innishmore in this county, on the 17th of May last.

Gentlemen, from the nature of this case, as established by the testimony which you have heard given, it will not be necessary for me, at this late hour of the night, (12 o'clock) to detail minutely the evidence given by each Witness.

Gentlemen, the Prisoners, it appears from the evidence, were not guilty of giving a blow to the deceased, or of inflicting any personal injury on him. A great variety of Witnesses have been produced and examined whose testimony, in my opinion, does not directly apply to the offence charged in the indictment, and I shall not, therefore, occasion a further waste of your time by making any comment whatever on their evidence. I shall endeavour to shorten my observations by directing your attention, simply, to the question you are to try, namely, whether the Prisoners were aiding and assisting the person whom it is alleged gave the deceased the mortal wound, of which he died.

Gentlemen, it will be unnecessary for you to consider either the character of the outrage, or the enormity of the crime, unless you are satisfied that the Prisoners were present, aiding and abetting in the commission of the homicide.

We are not to inquire now, into the cause of the party feuds which have lately disgraced this county and disturbed its peace, and which gave birth to this fatal riot. But, Gentlemen, we are to inquire whether the Prisoners voluntarily and intentionally participated in those acts, by which it is admitted that the deceased lost his life by the hands of some person.



Gentlemen, in considering the evidence given in this case, your first and most important inquiry will be, whether the Prisoners were present at the riot which took place on the day charged in the indictment

Secondly, supposing you are satisfied that they were present you are then to inquire what evidence you have of their having been actively engaged in assisting the person, charged as the principal in the commission of the crime of murder. On this part of your inquiry, I am of opinion, that you will not have much difficulty in satisfying your minds, for, in the entire course of this long protracted trial, it does not appear from the evidence of a single Witness, that either of the Prisoners ever struck the deceased a single blow. Nor does it, I believe, appear except from the testimony of one or two Witnesses that the Prisoners were engaged in the battle, or attempted to strike any one

Gentlemen, one of the Witnesses William Pye, of whose evidence, and manner, and conduct, while under cross-examination, I shall speak hereafter, has told you he saw Thomas Rooney take up a stone of twelve pounds weight, with which he struck the deceased a blow on his head after he had been knocked down. If that person were now on his trial, and that you believed Pye's evidence the crime of murder in point of law, would certainly be imputable to him, because any one capable of committing so cruel and savage an act, even without a pre-meditated design, would in contemplation of law, be guilty of the crime of murder. The law, Gentlemen, that constitutes the crime, is satisfied if the malignant intention to kill, correspond with the atrocity of the act, with the wicked means taken to effect the diabolical purpose. In such a case the law is satisfied that the person thus committing the crime, was regardless of human life and fatally bent on mischief.

But, Gentlemen with respect to the Prisoners, you must be satisfied that they, in the part they are said to have taken in the riot, acted with the deliberate intention of aiding and abetting the principal in committing homicide, to wit, that you, under the evidence given in this case in finding them guilty of murder.

Gentlemen, what are the facts established by one of the most respectable of the Witnesses? That on the morning of the 17th of May last, a challenge was agreed to be fought by two young men. That on the day preceding the place of meeting was appointed, that the friends of both parties had received notice to attend, and on the next morning, (it is to be presumed) pursuant to the notice, they assembled at the place in great numbers, and to do what? To see the challenge decided by the two combatants, a circumstance, it seems of very frequent and common occurrence among persons of their description in the country.

Gentlemen, however irresponsible those people are in the case of

the law, for a breach of the peace, for the offence of a riot and unlawful assembly, yet, if you believe that their being present proceeded from a motive of idle curiosity, they could not have entertained that malignant intention which the law requires to constitute the crime of murder.

Gentlemen there is also this material fact in evidence, which I entreat you will not lose sight of, namely, that Kenny was the challenger, that he and his friends were first on the ground, and when there by their shouts of defiance and provoking expressions, calling on the other party, if they were not cowards, to come to the fight, and thereby provoked the first breach of the peace, and the next material fact for your consideration is that the unfortunate young man, William M'Creery, the deceased was himself engaged fighting in the general battle, as one of Kenny's friends and of his party, at the very time he received the mortal blow.

Gentlemen, from these circumstances have arisen, in a great measure this fatal transaction and from this view of the case, if you believe it, you cannot find the Prisoners guilty of a higher crime than that of manslaughter.

Gentlemen, I think it my duty to call your particular attention to the evidence of that most respectable Gentleman, Mr. Armstrong. He says that he was at Innishmore before the fight began, that he did not see the Prisoners engaged in the combat; that many persons, the friends of both parties were present whom he did not see taking any active part in the fight, and that some might have come there from a motive of curiosity. If you believe the Prisoners were present, and were actuated by that motive only, they are not guilty of the offence charged. For, although persons were present in a quarrel, where a homicide shall have taken place, yet if they are not actively and intentionally engaged in aiding and abetting the slayer, they are not guilty of the crime of murder.

Gentlemen, with respect to one of the prisoners, William Carlton, you have the evidence of three Witnesses of his being present and of two of his having taken a part in the quarrel, but there is a question arising on their testimony, whether you will think those witnesses from a variety of circumstances, entitled to credit.

Gentlemen, the witness, John Pye,\* has taken upon himself to identify both the Prisoners. It is perhaps, unnecessary for me to call your attention to the prevarications of this Witness when cross examined, and to his general demeanour, when

\* It is very remarkable that in the trial of this case, the co-prosecutor in the former trial, with Pye, viz Anne Stewart, was not examined. Yet, upon her testimony chiefly, coupled with that of Pye's, Denis Roonev, an old man of 60 years of age, was sentenced to transportation for life, and that sentence has been carried into execution.

giving his testimony. In considering the weight of his evidence, you will hold in your recollection that he was actively engaged himself in the entire of this transaction, from the beginning to the end of it, and afterwards in conveying Prisoners to gaol, and lodging informations against some of them, on the very evening of the day of the riot. Yet, you find that from that day, which was the 17th of May last, until the 20th of July following, he (Pye) never made any information whatever against either of the Prisoners. And where does he first resolve on making his charge against them? At the last Quarter Sessions of Enniskillen where they had come to take their trial for the assault you have heard so much of by a great many other Witnesses on this trial. The Prisoners were then about being discharged on bail to the present Assizes, and then the witness Pye, and one of the others, lodged their informations, while the Court is sitting, before two of the Magistrates attending the Sessions against the Prisoners for a capital felony. Gentlemen, the very same observations are applicable to the testimony of the other two Witnesses, Cluff and M'Cart.

Gentlemen, on the testimony of these three Witnesses you have to satisfy your minds on these questions of fact, namely, first, whether you believe the Prisoners were present at all at the riot, and if present, whether they were aiding and abetting the principal, Thomas Rooney, or some person unknown, in the commission of the homicide. And supposing you believed them to have been there, I would again call your attention to the facts given in evidence by Mr William Armstrong, "that for the purpose of preserving the peace and preventing the battle, he first went to prevail on Lunny's party to desist from fighting, who told him they did not wish to fight," &c &c. He then proceeded to try his influence over Kenny's party, and give me leave to ask, Gentlemen, why he took the trouble of going there, if he were not then satisfied in his own mind, that he had prevailed and settled the dispute with Lunny's party? What was he told by Kenny's party? "that they had come to see the challenge, and would rather have the fight." And shortly after he had left them, he heard them calling Lunny's party 'cowardly rascals,' and calling on them to come down and fight, or they would drag them out.

Gentlemen, I have but one further observation to make on this case, namely, that the witnesses Pye, Cluff, and M'Cart, were themselves attached to Kenny's party, all of them engaged actively in the riot, and Pye is now taking his trial for the part he took in the fight on that day.

Gentlemen, at this very late hour, I shall not trespass on your time longer than to repeat, that if you believe the Prisoners were present, but did not participate in the crime of which they are charged, they are entitled to your acquittal.



If you believe they were concerned in the riot, and were actively engaged, aiding and abetting the principal, but not with any malicious intention, or previous design of assisting him in the homicide you should find them guilty of manslaughter

If you entertain any rational doubt of their guilt, under all the circumstances of the case you will acquit them.

After a short time the Jury returned a Verdict of Manslaughter against all the Prisoners, but they recommended the Prisoner M'Ilmurry to mercy. The Learned Judge said then recommendation should be attended to.

The Prisoners were then sentenced to twelve months imprisonment—the term of their imprisonment to commence on the day of their Verdict.

### FRIDAY, AUGUST 27.

The King, at the Prosecution of Andrew Johnston, and others, against James Plunkett, Andrew Creegan, Hugh M'Manus, junior, Hugh M'Manus senior, John Lunny, William Graham, Neil M'Cart, Robert Creegan, Judith Lunny, William Rooney, Hugh Lunny, Thomas Rooney, Michael Costello, Paul Cassidy, Edward Ciancy, Anne Lunny, and Philip M'Ilgun

The Prisoners were indicted for a *Riot and Assault* at Innishmore, on the 17th of May, 1824 —In this case the Indictment being for a Misdemeanor, the Prisoners had no right to make any peremptory challenges, and the first twelve called were sworn —According to immemorial usage in this county, there was no Catholic Freeholder either on the Panel, or even in the Jury Box.

### EVIDENCE ON PART OF THE PROSECUTION

#### *Andrew Johnston examined.*

Witness said he was in Innishmore on the 17th of May last; he went there about six o'clock in the morning, saw a number of men assembled there, saw Kenny's party at the place where the men were to have fought, saw Lunny's party also; saw a party come from Monteagh side, and one from Belamane side; there was a party at Lunny's house, where they all joined, the parties met in a meadow, the place appointed for the fight, Kenny's party were in the meadow when Lunny's came down, he saw Lunny's party shake hands with the party that came from Monteagh, and then they all with one consent gave a cheer, and ran down the hill towards Kenny's party, who then retreated, and were pursued by Lunny's party, who, on coming up with the former, attacked and beat them, he saw some of them knocked down, some of Kenny's men who were in front, while retreating, stopped, when they turned round he

saw some of their party knocked down. At this time Witness was with Lunny's party striving to make peace. Witness is cousin to Kenny who was to fight there, being a native of the Island, he (Witness) thought he could have had some influence with them, he knows James Plunkett, (identified him,) and saw him in the quarrel following Kenny's party, with a staff in his hand, knows Paul Cassidy, (identified him,) he saw him running towards the meadow after Kenny's party, and having a staff also, he knows William Rooney, and saw him with a stick with Lunny's party, but did not see him do any thing, he saw some of the men from Monteagh having a white mark on their hats, saw Edward Clancy there with a stick, pursuing Kenny's party, before the fight began Witness saw Pat Lunny, but did not see him do any thing there, Witness got a good beating there on that day, he was struck behind his back, and knocked down into a potatoe furrow, by some of Lunny's party he saw a great many men knocked down, he knows Denis Rooney, and saw him there in front of Lunny's party, he heard some of them say they'd beat the Lisbellaw blackguards, and heard a great noise amongst them; knowing Denis Rooney, he went up to him for the purpose of preventing a quarrel, when he instantly swore he would never leave the ground until he would have a Lisbellaw man's life, Witness then saw some of Lunny's party throw up their hats and cheer, Kenny's party were scarcely thirty, those at Lunny's house, with the Monteagh party joined, were innumerable, they had a superior force, he can't tell how many they were, but they were far more than two to one at Lunny's

*Cross-examined by Mr Rolleston*

Knows John Pye, and saw him there on that day with a stick, but after the fight did not see him have a stick, he thinks every man of Kenny's party were struck at the time Lunny's party pursued them, and then to be sure they struck in their own defence, Witness saw stones thrown and flying over him at the time he was lying on the ground bleeding, he cannot say, whom he cut or struck, but he did not strike any one until knocked down, they appeared very willing to disable him, heard some of Lunny's party shout out to murder him, he did his best to save himself, he laid about him when he got an opportunity, he never fought much, is an Innishmore boy, would not like to be beat, heard some of Kenny's men say, "come down Lunny, and fight if you are a man, or make it up," it was Lunny first gave the challenge. Heard Kenny tell Mr. Armstrong that he would go into an island and fight, and he would bring one man with him, and let Lunny bring another, and no one else, and they would end it themselves, he saw James Plunkett with Lunny's party, and also

saw Cassidy and Clancy in the same party pursue Kenny's, but did not see him strike or do any thing, Witness swears he would not have struck any person if he had not been beat himself, seeing such a number of Lunny's party, Witness was terrified, for they threatened their lives, does not know what ill blood means, will never quarrel with them if he is let alone.

Question by the COURT —How come you to go there on that morning? A. I went to see the fight as a spectator.

Q. Where did you get your stick? A. I brought it from home.

Q. What necessity had you for a stick? A. Because I was sure I would be beat.

Q. And therefore you brought a stick to beat others? A. I thought to make peace, and I might as well be beat as my cousin to be beat. I was told by a Catholic boy, on that morning, that they would be all beat if they went to the fight—I went to prevent my cousin Kenny from fighting.

*Robert Montgomery, examined by Mr. Deering*

Witness said, he recollected the affair at Innishmore, he went there to see the fight between Kenny and Lunny, he was there about six o'clock in the morning, a few of Kenny's party stopped at Witness's father's house, he saw those persons going into the meadow, he saw a party at Lunny's house and another party coming round the hill from Monteagh side, he saw the prisoner Pat Lunny waving his hat as a signal, (identified Pat Lunny) to the Monteagh men to come on—He saw them crossing the water in cots, and on their landing they came on running to the place where the challenge was to be fought, and joined Lunny's party there. Witness then passed by convenient to the ground fixed for the fight, up to Kenny's house, and he saw Mr. Wm. Armstrong there. After the Monteagh men joined Lunny's they threw up their cudgels and cheered—All of them that I saw had cudgels in their fists, it was impossible for him to see all that had cudgels. They then rushed forward to the meadow, and Kenny's party ran away, they retreated, Witness could not say which of the parties struck the first blow, he could not see who gave the first blow, they were fighting all together, he saw William M'Creery, the deceased, there, he saw John Lunny, Pat Lunny, and Hugh Lunny there, and Robert Creegan and Andrew Creegan, he did not recollect seeing William Rooney there, he saw old Hughey Lunny, he could not say he had a stick, he did not recollect seeing William Graham, he did not recollect seeing James Plunkett, he saw Judy Lunny throwing stones, he saw Denis Rooney there, he heard shouts, Witness received some injury, he was struck in the back with a stone.



*Cross examined by Mr. Dogherty*

Q Were there any friends of yours from Lisbellaw there ?  
 A There might—I am an Innishmore man, I know the Lisbellaw boys, but I am a quiet man—I never was in a fight in either fair or market—I never was seen at a riot—I might have been at a couple of boxing matches

Q Were you armed ? A I happened to get a stick in the field of battle, I got it at Kenny's

Q Were there more sticks than one there ? A There were

Q Was your Father there, isn't he a Constable ? A He is a Constable, and he was there, he lives in the Island

Q He could not prevail on his friends, the Kennys to keep the peace ? A I heard one of the Kennys desiring him to come down the next morning

Q Did you see Lunny's party coming to the field ? A I did

Q Did you hear them receive any invitation to come and fight A Yes, I heard men call to them to come down and fight

Q Did you hear them called a set of cowardly rascals ? A I don't recollect the words ; I heard them called to come down and fight

Q How many of Kenny's party were then below on the field of battle ? A There were but a few men then, about ten or twelve—I heard some of Kenny's men telling them to come down and fight, or to make it up. My Father spoke to Mr Moore on the night before to exert himself to have peace, and Mr Moore did so

Q Where was Kenny, the challenger, then ? A He was down with the men in the meadow, where they were to fight

Q The Lisbellaw Boys made a part of Kenny's party ? A There were some Lisbellaw Boys, and some from other places

Q The Lisbellaw Boys were armed ? A I saw some guns.

Q How many ? A I saw a great many with guns—the most of those that had them were Lisbellaw men that came there after the fight

Q Had any of those men that came there after the fight, been in the fight before ? A Some of them with fire arms were in the fight that day before

Q Do you know the names of such men as returned ? A I cannot take upon me to name them

Question by the Court —What brought you up to Kenny's house ? A I saw Mr Armstrong going up, and I went up too—I did not wish to be in the fight, and I thought Mr. Armstrong would make peace

Q It was at Kenny's house you provided yourself with a stick—was it for the purpose of making peace? A. I took the stick at Kenny's when I saw a great many men coming to Lunny's house—and until I saw that gathering, I did not take the stick, and there were several about the doors.

Q. Were there many persons then collected in, and about Kenny's? A. There were about thirty.

*Thomas Kenny, examined by Mr. Latton.*

Witness said he was brother to William Kenny, he recollected the 17th of May last, he was in the place where the challenge was to have been fought, and went out pretty early on that morning, he met Mr. Armstrong and applied to him to interfere and have peace made, he spoke to his brother William to make peace, and not to fight, he saw Lunny's party at his house, and saw a number of persons join it, who came round the hill from the Monteagh side, saw Lunny, one of the combatants, with his second, strip, and then rush forward with his party, he swears he did not see any blows given by Kenny's party until pursued and attacked by Lunny's party, who were then more than four score, saw four or five beating one, most of his brother's party who were retreating were beat, and some few escaped to Witness's house, Witness knows the Prisoners, Andrew Creegan, Robert Creegan, Judy Lunny, William Rooney, sen., and William Rooney, jun., John Lunny, Ann Lunny, Hugh M. Manus, sen., and Hugh M. Manus, jun., William Graham, Neil M'Cart, Pat Lunny, Pat Rooney, and Thomas Rooney, (identified them,) as having been in Lunny's party, fighting on that day, heard Lunny's party cheering, and heard some of them say that they would never leave the ground until they would have a Lisbellaw man's life, prisoners were present at this, recollects it was Denis Rooney who made use of these words, and all of them that Witness saw had sticks, except the women who had stones.

*Cross-examined by Mr. Rolleston*

Q Mr. Kenny, have you joined this party of conspirators to convict poor Judy? A. I did not come to convict any one, he left Judy to his Lordship and the Jury.

Q Had Judy any fire arms? A. I did not see a piece with any of the women

Q. By virtue of your oath was not your own sister Jenny there? A. I heard she was.

Q Did she fire at any one? A. She did not.

Q Did you see poor Judy's brother knocked down in the battle? A. I did not.

Q But Judy might have seen it? A. She might

Q. Your sister went to assist her brother—poor Judy might have gone with the same intention? A. I am very sure she went to assist her brother and the whole party—they were both fighting, and she was aiding and assisting them—there were no women there but the two.

Q. What arms had you. A. On my oath, I had nothing in my hand, and I was knocked down, and abused.

Q. How many persons had assembled at your father's house previous to the fight? A. From twenty to thirty, but I don't think there were thirty—I must think there were fifteen sticks at our house—but I did not see ten sticks.

Q. When your brother William and his friends were on the field of battle, did you hear them reproach the Lunny's and the Monteagh Boys for being cowards? A. I heard my brother call up to Lunny to come down and fight, if he were a man, or to make it up.

Q. Did they tell Mr. Armstrong they would make it up? A. I cannot say.

Q. Had you any guns in your father's house on the night before the challenge? A. There was one gun, it was not loaded—I put the ramrod into it the night before.

Q. Why did you do so? A. On my oath, my reason for trying the gun was to ascertain whether there was any thing in her—and, knowing there would be a fight the next day, to prevent mischief. I heard so from one of the opposite party, and that Lunny was to have a party gathered on the next day. I told my father, and I took the gun and left it just where it had been before, and I thought if there was a charge in it to draw it, to prevent mischief the next day.

Q. On your oath do you know whether that gun was made use of by any of your party on the next day? A. On my oath I don't know whether she was or not—I don't think she was fired out of on that day. I examined her next day, and there was no charge in her then.

Q. Hav'nt you heard the gun was sent for, and taken to the field. A. I heard she was taken out, and if fired, I know not where the charge was got.

Question by the Court —Did any person tell you that the charge was drawn on the night preceding? A. No one.

Q. Were you at home the entire of that evening? A. I was not at home from night-fall, I didn't think there was a charge in the house.

*John Howe examined by Mr. Boyd*

This Witness was produced and examined on the two former trials, he identified the prisoners Robert Creegan, Hugh M'Manus, senior, and Hugh M'Manus, junior, as being en-



gaged in the fight, he said he had heard of the fight on the evening before, and he and fourteen or fifteen others went from Ballindereragh to join the Kennys

*Pat. M Cart examined by Mr. Scholes*

This Witness was also examined on the former trials. He identified the prisoners Philip M'Ilgun and Hugh and John Lunny, as being engaged in the general riot, he admitted that he was himself engaged in the riot in his own defence, there were about 17 with him from the neighbourhood of Lisbellaw

*Abraham Irwin examined*

Witness gave evidence of the riot, and identified the prisoners William Graham, Neil M'Cart, Hugh M'Manus, junior, Robert Creegan and William Rooney, as being present, and taking part in the affray. On his cross-examination, he admitted he was actively engaged himself, as one of Kenny's party, but in his own defence. There were ten or twelve islanders of Kenny's party.

*William Kenny, examined by Mr Lyle*

Witness said he was at the affray fought in the island of Innishmore on the 17th of May last, he was the man that was to fight the challenge with John Lunny, they were not permitted to fight, Witness was attacked and beaten by Lunny's party, on his oath, he thinks Lunny's party numbered about *four hundred*, the prisoners Andy Creegan, Robert Creegan, Michael Costello, Pat M'Caffry, John M'Buen, Hugh and John M'Manus, were all of Lunny's party, he saw them fighting

*Cross-examined by Mr. Dogherty.*

Q You were one of the combatants? A I was.

Q. Don't you think yourself fortunate in 'not being tried for your life? A I suppose, may be it is fortunate for me that I was not tried, John Lunny was the other combatant.

Q Didn't you give the challenge? A. I neither sent nor delivered the challenge.

Q On Sunday before the battle, did you follow Lunny out of the Island? A No, Lunny was walking on the road, and I went into my brother's on the road side.

Q. Yes, but Lunny was walking before you? A He was.

Q. You were not fond of him before that day? A. I was not, he accused me of what I was not guilty of.

Q Didn't you ask him to fight you on that day (Sunday) after you had overtaken him? Yes, I was anxious to fight on the spot, and put an end to it.

~~stripped to fight?~~ A. I did.

Q Didn't Lunny refuse to fight on the Sabbath Day ? A. He did, but he said he would fight me on the next morning.

Q. By virtue of your oath, did Lunny challenge you to fight him on the next day ? A. On my oath, he did, and desired me to meet him if I were not a coward, and reached his hand over another boy's shoulder to shake hands, as a token of our agreement.

Q Was not that challenge the origin of all this unfortunate transaction ? A. I don't know, if Lunny had ended it on Sunday, there would have been no more about it.

Q That is no answer, Sir, you challenged Lunny on Sunday, and you wanted him to fight, was not that the commencement and the cause of all that happened after ? A. I suppose the challenge on Sunday was the beginning of it all.

Q If not prevented by you on Sunday, would not Lunny have gone peaceably on to his place of worship ? A. I don't know where he was going, I asked him did he not accuse me of getting his friends beat in fairs and markets, Lunny said he did, I said I would clear myself of that before a Magistrate, and he told me I would swear a lie, they were then going to fight, and they were separated.

Q You are considered a first-rate boxer ? A. No, I never fought since I was a cub, there are twice as good boxers in the Island as I am.

Q What hour on Sunday did this take place ? A. I believe it was about ten o'clock.

Q On your oath, when you overtook Lunny, didn't you know he was going to Mass to his place of worship ? A. I don't know where he was going to.

Q Where did you go to then ? A. I went to look for a man to hand me.

Q. To whom did you go ? A. I went to one James M'Elroy, and he refused to second me.

Q For what reason ? A. *He told me he was promised against it.*

Q Did you apply to any other ? A. I did, I went then to Joe Trimble.

Mr. Rolleston.—You should have chosen a man of a better name for your second.

Q Did you see Trimble again ? A. Yes, he came to my Father's next morning.

Q. How many of the Islanders were of your party ? A. There might be fifteen, I cannot exactly tell.

Q. Mr. William Armstrong strove to prevail on you to be quiet, and not to fight ? A. He did, and I told him I would stay in the meadow and fight Lunny.

Q. Didn't you call on Lunny's party to come down ? A. I

told Mr. Armstrong I would rather Lunny would come down and either end it, or make it up.

Q. Had you taken Mr Armstrong's advice, would any bad consequences have followed ? A I cannot tell.

Questions by the COURT.—Where were you at that time ? A I was in the meadow , Mr. Armstrong left me in the meadow , some of them with me then went away , my second and I remained , I took off my coat before Lunny's party came down.

Q. What did you say to them ? A I told them to come down and fight, or make it up , I went there to fight

Q. Did you observe any particular colours ? A. To my knowledge, I did not see any ribbons, I don't recollect having seen any orange ribbons

Q Had you any fire arms ? A I saw a gun lying on a corn ridge, which I had seen before in my father's house.

Q Who brought it there ? A On my oath I cannot tell who brought it there , I do not exactly know the distance from Lunny's house , it might be about fifty perches, it is not half a mile, nor a quarter of a mile , the gun was his own, and was not charged

Q. How could you tell , I tried her with a ramrod, the day before , and I tried her on Saturday

Q Why did you try it on Saturday ? A I was going to shoot rooks , I live with my father , I don't think my brother brought the gun

Q Who drew the charge on Sunday evening ? A. I don't know.

Q Were you listening to the Witnesses giving their evidence on the first trial at the Assizes ? A I was , I did not hear then that the charge was drawn on the night before , I was looking for Joe Thimble to show him the place , I searched for a charge in the house, and could not find it.

*Robert Cluff examined by Mr. Johnston*

Witness said he lived in Innishmore , he saw the beginning of the fight at a distance , he saw the party coming from Monteagh , he could not say but that there was a large party on both sides , the two parties were nearly equal, till the Monteagh men joined , he could not say which of the parties struck first , after the beginning, he saw Kenny's party retreat from the ground, and Lunny's party pursuing them , he knew Bryan Rooney , he did not see him near to where the fight took place ; Witness was coming with a lancet to bleed Wm. McCreery , he saw Redmond Rooney on the road with Lunny's party , Witness heard some of them say they would not let the Lisbellaw men pass till they would beat them , they would not mist any Innishmore boy , they would let them pass, but they would not let the Lisbellaw men pass.



*Cross examined by Mr Rolleston*

Witness said the disturbance was all over at this time, he went to the place where M<sup>c</sup>Creery lay, he did not see any men coming with guns, he heard several shots, he can't say he heard twenty shots, saw the riot from a distance

*Richard Cluff examined*

Witness said he saw Anne Lunny carrying stones to Lunny's party, and heard her say "Fire away, boys," she struck the Witness with a stone on the shoulder

*Cross-examined by Mr Rolleston.*

Witness said he was violent himself in the battle, when he could not help it

*John Neill and William Montgomery* were then examined  
Their evidence was not material

The case closed for the Prosecution

## EVIDENCE ON PART OF THE TRAVERSERS.

*Cormick M<sup>c</sup>Caffry examined by Mr Rolleston.*

Witness said he was on the road side when the challenge was given, (one of the Jurors interrupted the Witness, and said he (Witness) had not kissed the book. The Witness kissed it again, and most solemnly asserted on his oath he had kissed it the first time \*) Witness saw Denis Lunny going to Chapel with his sister, Witness was on the road with them, going himself to Chapel, Jemmy Breslin was also present on the way going from Innishmore to the Chapel, Witness saw Willy Kenny coming after them, when he overtook them, Kenny asked Lunny, "did you say that I got —— Lunny, your brother, beat?" Lunny replied and said, "I never said any such thing, it was a lie," Kenny then stripped off his coat, and challenged him to fight on the spot, Witness and other men interfered and would not let them fight, Kenny then said to Lunny "meet me to morrow in Gilroy's meadow."

*Cross-examined by Mr. Johnston.*

Q. There were other persons present when the challenge was given? A. Yes, Hugh Nugent and others.

Q. What did Kenny say? A. On coming up to Lunny he asked him, why did you say that I got your brother beat? Lunny said it was a lie, and Kenny said he could prove it

Q. After you and others interfered to prevent them fighting,

\* This is a usual insult given in this County by an Orange Juror to a Catholic Witness

then Lunny gave the challenge to meet next morning? A. No, on my oath it was Kenny gave the challenge

Q What did they do when parting? A Before they parted, Kenny made him shake hands, and after that we went to Lisbellaw Chapel.

Q What was said by the people in the Chapel about the challenge? A. I dont know what they said, after Mass I came away, on coming along the way home, I heard several talk about the challenge

Q. Did you or Lunny tell the People in the Chapel any thing about the challenge? A I did not, nor did I hear any thing about it in the Chapel, when I came out, I heard people speaking about it on the road

Q There were a number of strangers at the fight next day, from Monteagh and other places? A I was not there, I went to town to sell my corn

*William Rooney examined by Mr Dogherty*

Witness said he was the brother of Denis Rooney, the person tried at the Assizes, he lived in Innishmore Island, on the land where the challenge was fought, he saw both parties between five and six in the morning, coming to the ground, Kenny's party came to the meadow first, he could not exactly tell the number assembled, there seemed to be about thirty, some of them had staffs, he saw their landlord Mr William Armstrong, coming there, he went to Lunny's party first, Witness heard him say to them, "Boys, this is bad work you are about," Denis Lunny replied, "I don't like to fight, but what can I do, Kenny is calling on me all the morning to go down," Mr Armstrong then said, "Stop there, boys, and I will go myself to Kenny's party," Mr Armstrong then went to Kenny's party to *strive to make peace* he saw Mr Armstrong meeting Kenny's party, Witness did not hear what he said to them, they came on to the ground, and some of them called out to Lunny's party to come down, called them cowardly rascals, and said, if they did not come down and fight, they would drag them out, Witness then, before a blow was struck, went himself to the meadow to Kenny, and told him to put on his coat, and not to quarrel, which Kenny said he would do, and Witness left him, after that Lunny's party came down, Witness heard one of them say, it would be well done to take that gun from them, there was a man with a gun in the potatoe field, Lunny's party had neither gun, nor sword, nor pistol, the two men stripped, but as soon as they met, both parties struck at each other, they then began the engagement, and fought for some time, and by virtue of his (Witness's) oath, he could not tell which of them struck first

Question by the COURT.—At what distance was the man

from the fight who carried the gun? A. About forty or fifty perches, I heard one of Lunny's party say they would take the gun from him, but when both parties met they commenced the fight, and I don't know which of them struck first.

Q. How long did the battle last? A. I cannot tell, my Lord, they fought a considerable time.

Witness said he had a stick himself, but did not strike any one during the day, the parties then began to throw stones, and to fire shots, the firing began after the throwing the stones, a man of the name of Reilly had a ball lodged in his thigh, Witness heard four shots fired at that time, then Kenny's party ran away to Kenny's house, Lunny's party made for the hill, and remained there till the party came from Lisbellaw, a number of men returned, I suppose there were 100 men returned, several of them had guns, Witness saw some of them in the fight in the morning, there were twenty men armed with guns, and more, Lunny's men, seeing the arms, fled to their cots, the armed men pursued them to the shore and fired on them when crossing the water in cots, a man of the name of Laurence Harran, when crossing the water, was shot through both his thighs by the Lisbellaw men and Kenny's men, the firing on the cots continued till the men got into Ballymanone, out of the reach of the shots and the men made off, but Witness, there were two or three cots conveying them to Ballymanone, Kenny's party then returned back to the houses of the persons that fled, and found no man there but Witness, the Lisbellaw men then began and smashed the windows and doors, they demolished Witness's house, and Denis Lunnys, and Denis Rooney's, and Bryan Rooney's houses,\* after wrecking the houses they broke and smashed two cots. Witness was there when the Magistrates and the army arrived, the most of Kenny's party and the Lisbellaw men had left the Island before the army arrived, the Magistrates took and made prisoners of such of the party as remained behind, and took their guns, which they found in an empty house, Witness thought there were seven or eight men taken, they were brought to Linniskilea gaol, but they were let out next morning.

*Cross examined by Mr. Boyd*

Q. You are the brother of Denis Rooney? A. I am.

Q. He has been sentenced to transportation for life? A. I understand so.

Q. Are you the father of Thomas Rooney? A. I am.

Q. Is he in the county? A. No, I don't know where he is.

\* For this outrage very few have been prosecuted, and not one convicted. The evidence of some of the Witnesses explains the reason.



Q He is not amenable to justice? A. I suppose not.

Q. If the Prisoners were acquitted, it might be serviceable to your son? A. I don't know, but as to myself, I did my best to keep the parties asunder, and prevent them fighting.

Q How many men did Lunny's party consist of on that day? A. I cannot tell.

Q Do you believe there were a hundred? A. I don't think there was.

Q How many were concealed in your own barn? A. On my oath, I had no men hid in my barn, I never said I had.

Q When the two boys came to the meadow they both stripped? A. They did.

Q. There was an end to the quarrel for that time? A. There was.

Q Immediately after Lunny's party advanced? A. They did advance a few steps, the other party were not far from them, they both closed, and then fought.

Q Soon after McCreery was killed? A. He was severely beat, I don't recollect how soon after, nor do I know who killed him, I suppose he was beat by Lunny's party, but I don't know by whom he was knocked down.

Q. By virtue of your oath, don't you know the man that knocked him down? A. By virtue of my oath, I do not, I did not see him knocked down. I saw six or seven men beating him, I did not know them, there was not a man of the name of Rooney among them, after the fight every man in the island of Lunny's party made off but myself, from all I heard of it, there were not one hundred strangers, there were a good many.

Q Did you see Bryan Rooney there on that day? A. I did not see him till after the fight was over, I cannot tell whether he ferried the Lunnys across the water or not, I think it likely, that if there had not been guns, there would not have been much harm done on that day.

*Amy McCallan examined by Mr. Dogherty.*

Witness said she lived in the island of Innishmore, she was there on the day of the riot the first part of it she saw was Kenny's party calling on Lunnys to come down, Lunny's party were then at Lunny's house she saw them fighting, and saw the deceased man lying on the ground, shortly after the fight, some of Kenny's party, and the Lisbellaw men, came with guns, she heard shots firing after the cots, she saw the men firing at the cots, Lunny's party were going off as fast as they could, she was in a house when it was broke by the party, it was about twelve o'clock at this time.

Mr. Johnston—I beg your pardon—I wish to know how long after the fight was it you saw the house demolished? A. I think it was better than half an hour after.

Mr *Johnston*.—My Lord, I object to this evidence going to the Jury, on the ground of its total irrelevancy to the issue on this trial. The facts the Witness is now giving in evidence, happened some hours after the riots and assaults, for which the Traversers are taking their trial, and it does not appear that those armed men were concerned as parties in the fight.

Mr. Justice MOORE —I am of opinion, Mr Johnston, that it does not signify whether the perpetrators of this atrocious outrage were parties actually concerned in the fight or not. I am now trying a riot which took place on the 17th of May last. It is in evidence that some of Kenny's party, that were in the fight, returned with the armed party—the Lisbel-law men. No part of this case shall be concealed. I shall take care, that the public shall see the whole of this transaction, from six o'clock in the morning. It is a question of fact for the Jury, and not for me, to ascertain how far the Prosecutors were concerned in this riot. The Traversers were banished from their houses—their place of residence was wrecked. It would not have been safe for them to have remained for the arrival of the armed party. Proceed with the examination of the Witness.

Witness said she saw the persons that fired the shots, and saw them afterwards wrecking the houses.

*Cross-examined by Mr. Deering*

Q With whom did you live on the 17th of May? A. I lived with Bryan Lunny, on the land where the riot was.

Q Did you see all that passed? A. I had a good view of it.

Q You knew all the parties engaged? A. I could not tell who were fighting, there were several of my neighbours in it, but it was so *throughout*, I did not know what was going on.

Q How soon after the fight did Lunny's party take to their cots? A. I can't tell, I think it was near an hour, when Kenny's party came forward to the house that I was in, they wrecked it, she heard they were looking for *Tomshy Rooney*, they said that when they would get in, they would take their lives.

Q. Did they take all your lives? A. No, but a boy of their party said it, there were some other women in the house.

Q. That is as true as all the rest you have been swearing? A. I am swearing nothing but truth, I heard no shots, nor saw no guns, till after the fight was over.

Q. How soon after did you hear guns firing? A. Just as the men were done fighting, it might have been half an hour after.

Q Where was that shot? A. In the potatoe ground.

Q Are you speaking of any other fight than that which was in the meadow? A. I am telling of no other fight.

Q Then, that shot was in the meadow? A. I don't know whether it was in the meadow or in the potatoe field

Q Did you see Denis Rooney in the fight? A. I did not; I cannot tell which party struck first, I can't tell whether some of Lunny's party were Monteagh men or not, they came round the Lough side, and joined Lunny

*Peter Reilly examined by Mr. Rolleston*

Witness said he was at Innishmore on the 17th of May last, he received a severe injury, there was a shot fired at him, the ball struck him in the thigh, and it is lodged there yet, the fight was then over a few minutes, it was about seven o'clock when he was wounded he was standing in the meadow, near to the place where the fight was, he saw two guns brought out of Kenny's house before the fight, there were three or four shots fired during the time the parties were fighting, Kenny's party fired the shots, he belonged to Lunny's party, and was fighting in his own defence, he was wounded after the engagement was over, he is positively certain that he saw the two guns coming out of Kenny's house

*Cross examined by Mr. Scholes*

Q. Are you an inhabitant of Innishmore? A. No, I do not live there, I live between Swanlinbar and the Island.

Q. Did you hear there was a man killed in the riot? A. I heard there was a man battered with stones, I was coming to town to get the ball extracted when I heard it, I knew nothing of any man being killed, I heard that there was another man wounded, who died in three days after.

Q Did you prefer any complaint to a Magistrate? A. Yes, I lodged informations respecting my wound before the Rev. Mr. Auchinleck.

Q When did you lodge informations? A On the day the two gentlemen came here from Dublin.

Q Why did you not complain sooner? A. I was in danger of losing my life, and I was not able to come to town sooner.

Q Who is the next Magistrate? A Lord Enniskillen, but he is not always at home, I was not able to stand for a long time after I received the wound

Q. You were busily engaged in the fight? A I was busy in it certainly, in my own defence, I went from a wake to see the challenge, it is a usual thing for young men to go to see a challenge.

Q Had you a cudgel? A I had a piece of a hazel stick in my hand

Q What occasion had you for a stick? A. Since the Lib-bellaw fellows began their work, I dare not go out of the door



without a stick, if I had gone home from the wake, I would not have been at the quarrel.

Q How many persons came from Monteagh in the cots with you? A. There were six or seven, I do not know the man that ferried me over, I saw Kenny's people going up before the fight, when they went first to the ground, Kenny's party were nearer to me, I saw no sign of a quarrel till Lunny's men came out of his house with the guns, I was with the Monteagh boys when they came round the hill

*Laurence Haran examined*

After this Witness had been sworn by the officer of the Court, the Turnkey of the gaol addressed the Jury, and informed them, the Witness had not kissed the book.

Mr. Kernan —My Lord I have to complain to your Lordship of a most disgraceful interruption of the proceedings in your Lordship's Court. My Lord, one of the Turnkey's of the gaol, situated on the dock, behind the back of the Witness on the table, has thought proper to stop his examination, by informing the Jury of that which is untrue—namely, that the Witness did not kiss the book. I positively assert, that the Witness did kiss the book. My Lord, in this county, this disgraceful trick has been frequently practised, for the purpose of seeking to impeach the credit of Catholic witnesses. In all the party trials which have taken place here for the last twenty years, I scarcely recollect one that this trick has not been resorted to by some partisan, whenever a Catholic witness has been sworn. My Lord, I consider this conduct a gross contempt of Court, and I trust your Lordship will prevent its recurrence in future.

Mr. Justice Moore said, such improper behaviour in the Turnkey was highly reprehensible, and desired him never to dare to take such a liberty again. It was the duty of the Clerk of the Crown, and not of the Turnkeys of the gaol, to swear the Witnesses.

*Witness examined by Mr. Dogherty*

Witness said he was in the island of Innishmore on the day of the fight, he saw the battle, when the fight was over, he was wounded by a ball that passed through both his thighs, he belonged to the party that was retreating in the cots from the island to Ballymanone, he was very near the shore when he was struck by the ball, sitting on the side of the cot.

*Cross-examined by Mr. Litton*

Witness was attached to the Innishmore men, he was in the battle, cannot tell how many came from Monteagh, Kenny's

party fought for a short time, and ran away, he did not know which party struck first.

*Denis M'Manus examined by Mr. Dogherty.*

Witness said he knew the prisoner Michael Costello, on the morning of the 110t, the Prisoner was standing with Witness on his land, opposite to Innishmore, on the other side of the lake, Costello was not at Innishmore that day, nor could not have been at the fight, without his (Witness's) knowledge.

*Cross-examined by Mr. Johnston*

Witness said he lived within a musket shot of Costello, he lived on the Monteagh side of the island, and saw people gathering to the fight, he received no warning to attend the challenge, and did not see any one from his part of the country go into the island that morning

*Patrick Murphy examined by Mr. Dogherty.*

Witness corroborated the evidence of Denis M'Manus, he said Costello was not at the fight, that he remained with him and some others, on the opposite side of the lake, till after the shots were fired.

*Francis M'Donagh examined.*

Witness corroborated the testimony of the two last Witnesses, he said that Costello was his brother-in-law, and that Costello and he were standing opposite the island, looking at the fight, till it was over.

*Bryan Plunkett examined Mr. Rolleston.*

Witness said he was the brother of the prisoner James Plunkett, he recollected the day of the fight at Innishmore; the Prisoner was working at a fire of ashes on his own land, he continued there till breakfast time, his land continued to the shore side; by virtue of his oath, the Prisoner could not have gone to the fight, on that day, without his knowledge, and he (the Prisoner) was not there.

*Mary M'Guire, examined*

She corroborated the evidence given by the last Witness

*John Farmer* was examined and proved an alibi for the prisoner, John M'Brien.

*John Farmer* was examined and proved an alibi for the prisoner, Paul Cassidy

*Bridget Farmer* corroborated the evidence of the former Witness.

*Edward M'Manus* was examined and proved an alibi for the prisoners, Edward Clancy and Pat. M'Caffrey.

*Anne Sweeny* corroborated his evidence.

The case closed for the Prisoners.

## SAME DAY.

*John Pye* (the principal prosecutor on the former trials) and *William Armstrong* were indicted for a Riot and Assault and an unlawful Assembly on the 17th of May last

The Prisoners were given in charge to the same Jury

## EVIDENCE ON PART OF THE CROWN.

*William Rooney examined by Mr. Rolleston*

Witness was examined to the general riot and affray at Innishmore, on the 17th of May last, his evidence did not vary from that given by him on the last trial.

There was no fact elicited by his cross examination material to the Prisoners defence.

*Rose M Guire examined by Mr. Rolleston.*

Witness said she recollected the riot on the 17th of May last, at Innishmore, she was then living in the house of her master, Owen Keenan, she was preparing breakfast for the family, when she was frightened by the firing of guns; Keenan's, her master's house, is within a field of the water, she fled from the house down to a field near the ferry, and stood behind a bush, she saw the prisoner, John Pye, with a gun (identified the Prisoner), she had known him before, she had lived in the same place with him for two years, she lived for some time in Lisbellaw, and was well acquainted with the Prisoner, she observed Pye coming round the shore with the gun in his hand, she saw him then present the gun and fire at Larry Harran and wound him, Harran was then passing over in a cot from the island, and about landing on the shore, when the shot hit him, he shouted "he was done for," this happened near to or about breakfast time, just after the persons that were fighting had scattered, she saw the Prisoner then going up to Rooney's house with the party, she saw them breaking open the door, she could not tell the number of the party, they had guns and bayonets, more than she could count, when Pye came inside the house, she heard him use these words, "when he could not get the men, he would kill the women and children before he left the island."

*Cross-examined by Mr. Lyle.*

Q Why did you leave the house when you heard the shots?

A I went out of the house because I thought it best to leave it to themselves.

Q How could you see the party from behind the bush? A. The bush was near the ferry, and I stood behind, and I could see them very well, and I heard Pye say "he would make the fatty headed women pay for it, when he could not get the men"



Q Did he beat the women ? A. I did not see him , I never heard he beat the women

Q You were greatly alarmed ? A. I was in the beginning, but not after, when the army came, the party ran away like the shot of a gun , I did not see any one going into the island on that day from Monteagh , they might have been there , I cannot tell how many men was there from Monteagh.

Q When did you lodge your informations against the Prisoners ? A. I did not lodge them, the Magistrates would not take them.

Q When did you apply to them ? A. I did not go to town for a fortnight after to lodge examinations , I was not well to go out

Q To whom did you apply ? A. I went to Major Armstrong first and he refused me , I went next to Capt. Gabbett, and he refused me , I went next to the Rev Jas Auchinleck, and he refused me

Question by the Court —Q You did not complain to any Magistrate for some time after the riot - A. No, my Lord, my health was bad, and I could not come sooner

Q You went first to Mr. Armstrong, what did he say to you ? A. He told me to go to Capt. Gabbett, and if he did not take my examinations to come back to him

Q Did Captain Gabbett give any reason for refusing you ? A. Yes he told me to go back to Major Armstrong

Q What did Mr Auchinleck tell you ? A. I met him in the street, and told him what I knew about it , and Mr Auchinleck bid me summon the parties , I thought it useless, and did not then get any summons or try any other when I could not get them , I went to Counsellor Kernan, Mr M'Guire the Attorney drew my examinations, and went with me to get them signed.

*Re examined by Mr Izle*

Q. Who brought you to town to lodge examinations ? A. The Rooneys came for me, after the Barrister and Sir James Galbraith came to this town , that was after the time that Pye had sworn against the Rooneys , I was sent for to come and tell the truth to those Gentlemen

Q Did you ever live in Cooneen ? A. I never did.

Q Had not you a child to some person there ? A. I never had a child in my life to any one

Mr. Kernan, My Lord, the Witness, Rose M'Guire, has mentioned her having complained to me, I am not a Magistrate of this county, and I therefore think it right to explain to your Lordship the transaction to which she alludes. In the month of June last, those riots were investigated by order of Government. Mr Blackburne and the Crown Solicitor were sent down from Dublin for that purpose , I attended professionally

on part of the Catholic inhabitants of the island of Innishmore, and after that highly beneficial investigation, the result of which will ever be greatly remembered by the Catholics,\* had been finished, I remained in the country and directed informations to be lodged against the persons who were charged with having committed a capital felony, for having destroyed the property of the Rooneys and others, and also against those† who had injured the persons of several individuals, by firing, with intent to kill them, loaded guns, and dangerously wounding some of the persons whom they had banished from the Island. For this purpose I sent for the last Witness, and also for the witnesses Harran and Reilly, and others, when the agent, Mr. M'Guire had prepared the informations of the last witness. Rose M'Guire, from her evidence I requested him to accompany her to the Magistrate, and see that her informations were taken and if refused, to recollect the Magistrate's reason for not taking them. Mr. M'Guire did accompany her to a Magistrate, and she has, on her oath, informed your Lordship of the result. Mr. M'Guire, the agent, is in Court.

*Laurence Harran examined by Mr. Boyd.*

Witness said he recollected the morning of the riot, about an hour after the general engagement, he was crossing the water in a cot, and when he was leaving the cot on the other side, he was wounded by a shot fired at him from the island, the ball passed through his two thighs, the shot came from the island, he did not know by whom it was fired, when the firing at the cots began he turned his back, he did not see either of the Prisoners, nor does he know either of them.

*Cross-examined by Mr. Deering*

Q Do you know Denis Rooney? A I do.

Q Did you know of his having been charged with the murder of Wm M'Creery? A. I heard that he and his nephew Thomas Rooney were charged with it.

Q Do you know of the Prisoners being examined as witnesses against Denis Rooney? A I heard they were—I was here at last Assizes, I was not here yesterday.

Q Did you hear of Tanshy Rooney flying out of the country? A I did.

Q You ran away, you were not certain of being wounded? A. I knew full well I was wounded—I was in the fight.

Q. You were running away from the engagement? A I was running away for fear of my life—I was more afraid of being murdered.

\* After the investigation a number of the Catholic Prisoners were discharged from the gaol of this town on bail, some of whom had been detained by the Gaoler, by order of a Magistrate, without even a committal.

† Some of whom were in custody and discharged on bail by a Magistrate.

Q. Did you hear that William M'Creery was murdered in the battle A. I did not—I heard he was wounded—that he was knocked down senseless.

Q. Did you go off with the Monteagh men A. I was brought to a neighbours house, and staid there till I was brought to this town—every one was running and making the best of their way—afterwards he walked to this town, assisted by his brother to get his wound dressed He told his brother he did not know the man that wounded him, and unless he was well acquainted with the man, he would not swear against him—he did not swear against the Prisoners

*Francis Creegan, examined by Mr Scholes.*

Witness said he lived in Clintacoragh, in the Island of Inishmore, he was there on the morning of the riots, he knew the prisoner William Armstrong, (identified the prisoner,) A few minutes after the battle was over, he saw a gun and bayonet in his hand, he saw the prisoner level and fire the gun, he knows that part of the Lough next to where the fight was, he saw the prisoner Armstrong, present the gun, and fire at the party in the cots, he saw him firing more shots than one, he saw the Prisoner load the gun, and fire her again in the same direction, the party might have been about one hundred yards from him.

*Judith Lunny, examined by —*

Witness said she saw the prisoner Wilham Armstrong, fire a shot at Lunny's party after the fight was over.

Here one of the Agents for the prosecution, (Mr. M'Guire,) informed Mr. Kernan that the last Witness, Lawrence Harran, was since assaulted in his passing from the Court to the street by a person of the name of M'Creery

Mr. Kernan—My Lord, I have been informed by the Agent for the prosecution, that Lawrence Harran, the last witness, on his leaving the Counsel Table, was assaulted in the Hall of the Court-house by a person whom he did not know, and that immediately afterwards, on his passing from the hall to the street, he received a violent blow of a stick on the back of his neck, given to him by another person, one of the M'Creerys, the Lisbellaw Boys, without offering him the slightest provocation. In the course of your Lordship's experience, I am convinced you have never seen nor never heard of so daring an outrage as the present, committed in Court, in your Lordship's presence, and almost in your Lordship's view, for the purpose of intimidating the Witnesses, and overawing the administration of justice—My Lord, if the Witnesses for the Crown are to be thus treated, I shall beg leave to close the Case here on part of the Prosecution.



Here the poor Man was brought into Court, scarcely able to stand, from the blow he had received on the back of his neck.

Mr. Justice MOORE—This is a most daring and atrocious outrage—I never recollect any thing to equal it, Mr Sheriff (addressing the Sub-Sheriff,) I am very properly called on by Counsel, to protect the administration of justice, and to preserve the peace of the country. The King's Justices of Assize presiding in his Courts of Justice, represent the King himself, and if any man shall assault another in view of the Court, he is subject to a high penalty—to the forfeiture of his right arm. Let the Witness's information be prepared, and sworn immediately before a Magistrate, and let the most prompt exertions be used to apprehend the offender, and bring him to justice.

Mr. BELL, the Sub-Sheriff, left the Court for a few minutes, for the purpose of apprehending the offender, and executing the Judge's order. He soon afterwards returned and informed the Court that the complaint made by Harran, the witness, was untrue, that it was a gross fabrication, and that he could produce fifteen witnesses to prove the contrary.

Mr. Justice MOORE—Talk not to me, Sir, of your fifteen witnesses. In the progress of these Trials, I have seen enough of that\*—If these outrages be permitted, Sir, I know not how long the Bench itself, may continue safe—Where are your Constables? If the Constabulary force of the country be not sufficient to protect the administration of justice, call to your aid for the *posse committatus* of the county, and if that is not sufficient, Sir, what is to be done—shall I, for the protection of justice and the laws, have to call out the military—I now tell you, Sir, that should such another daring insult as this be committed, (an insult to the Court and to the Laws, and disgraceful to the Country,) during these Assizes, I shall feel it my duty to impose an extremely heavy fine on the High Sheriff. His highly proper conduct and attention to duty since my coming into this county, will prevent my imposing such a fine on him and you, on the present occasion, as you would find difficult to discharge.

Lawrence Harran's informations were then prepared, and sworn in Court, and taken by Counsellor Deering, who is a Magistrate of the county.—The delinquent escaped the vigilance and activity of the Sub-Sheriff and the Police.

*Judith Lunny, examined by Mr Dogherty.*

Witness said she saw the prisoner William Armstrong, fire a shot at Lunny's party.—The Case closed on part of the Crown.

\* In the Case of the King, v. Carlton and McIlmurry, there were fifteen witnesses examined on part of the Crown.

# EVIDENCE EXAMINED ON PART OF THE PRISONERS.

*Abraham Irwin, examined by Mr Deering*

Witness said he had been examined before, he recollected the time when Lunny's party were going to the cots, he was then standing at the distance of four or five perches from the shore, he did not see the prisoner Pye have any arms, he saw him there, he could not take upon him to state the particular person who had fired the first shot, Pye could not have fired it without his (Witness's) knowledge

*Cross-examined by Mr. Johnston*

Q. Were there not several shots as well as the first shot fired? A. There were a good many there that fired shots—they belonged to Kenny's party.

Q. Did you see Harran, the witness that just left the Table, there? A. I did.

Q. Did he fire any shots? A. I don't believe he did

Q. Do you believe he was severely wounded by a shot fired by that party? A. I believe he was wounded by one of the shots.

Q. Didn't you belong to Kenny's party? A. I did.

Q. And is it possible you didn't know the name of any of the party in arms that fired the shots? A. I cannot tell the name of a single person that fired a shot.

Q. Did you see the cots with the people crossing the lake? A. I saw a cot full going over, but I did not see a shot fired from behind me.

Q. The men that fired the shots were near the shore, and you were looking towards the shore, and you can't tell the name of one that fired? A. I cannot—I mean a man that belonged to the same party—there came men there with guns.

Q. After the firing, did you see the attack on the houses? A. I did not—I went to Kenny's house, and I heard there that Rooney's house was wrecked.

Q. You said you did not know the persons who fired the shots—did you know the persons that came there? A. I saw some men from Lisbellaw carrying guns—I saw one of the McCreery's having a gun

Q. Did you hear any remarks made by them? A. I did not hear any conversation among them.

Question by the COL RT.—Did you see where the men went to after firing the guns? A. They went to Kenny's house immediately after.

Q. Did Pye go home with you? A. I did not take particular notice, I stopt at Kenny's till the deceased was carried away by the Guard\*. Pye came from the shore where the firing was, and I did not see him after. The party that came from Lisbellaw did not load their guns.

Q. Did you see the persons that were wounded? A. There was one Reilly wounded.

Q. When did you see Pye after? A. I saw him the next day in gaol—Denis Rooney swore against Pye in gaol.

*Pat. M Cart examined by Mr. Lyle*

Witness said he was examined this day before, he recollected a shot having been fired at the shore, after the party went into the cots, he heard other shots fired when Lunny's party were taking the cots, he saw the prisoner John Pye there, he had no arms that day at all, he saw him when the shot was fired at the shore, Pye and Witness were standing together

*Cross examined by Mr. Boyd*

Q. Did you and Pye see the persons that fired the shots? A. I did, and on my oath Pye did not fire it—Pye and Witness both belonged to Kenny's party

Q. Did you see the Lisbellaw Boys, coming with arms? A. I did—I heard they brought their arms for their own defence—by the virtue of my oath I don't know the persons that fired the shots

Q. You have heard that six or seven men with arms went down to the shore after Lunny's party—who were those persons, or any of them? A. There was a few went down before me to the shore—Pye was not one of them, he was standing with me

Question by the COURT.—Did you see a man of the seven that you knew? A. I did not know them, my Lord—I cannot tell at present who fired the shots.

Q. I am not desiring you to name the persons at the Bai, but can you mention the name of any one of the seven? A. I saw some of the M'Creerys, they had guns—I saw one Carsan have a gun

Q. How can you swear positively that Pye did not fire a shot? A. Because he was standing with me when the shots were fired.

Q. Did you see the houses wiccked? A. I was standing by when the houses were broken—there were four or five with me—on my oath I did not know one of them that broke the houses—they belonged to Kenny's party

\* A name given in this county to unlawful assemblies of armed men—See the Trial of the Tuerney Case—King v. M. Hugh, tried at the present Assizes



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*Thomas Kenny examined by Mr Deering*

This Witness was examined before—he was brother-in law to the prisoner Armstrong, and proved an *alibi* for him, so far as that he did not fire the shots —Case closed on both sides

JUDGE'S CHARGE

The Learned Judge stated to the Jury the several Indictments against the Prisoners in the two last Cases tried—he said he would inform them what legally constituted the offences of a Riot, a Rout, and an unlawful Assembly, as charged in these Indictments, and leave the application of the evidence to the Jury themselves —He recommended them to turn their attention principally to the Indictments which charged both parties with being guilty of a Riot and an unlawful Assembly—they had heard what was sworn against the Prisoners in the first case, who were called Lunny's party—every one of those whom the Jury believed were present, and took a part in the general engagement, it was their duty to find them guilty —Such of them as they believed were not present, and of that fact they had the evidence of several Witnesses, were entitled to their acquittal. He thought, in the second Case tried against the prisoners Pye and Armstrong, the same observations applied, the Jury could have no doubt of their being present —The prisoner Pye was confessedly of Kenny's party, and every man of that party, as well as of the other, that assembled on that morning with the deliberate purpose of breaking the peace, and who took any part in the affray, were guilty of the several offences charged in the Indictment, namely, of a Riot, a Rout, and an unlawful Assembly All the witnesses examined, brought the prisoners Armstrong and Pye to the field of action, what part they took in it when there, it was for the Jury to decide.—He called the attention of the Jury particularly to this observation, namely, that Pye and Armstrong were not on their trial for firing the shots that wounded some of the other party on their retreat in the cots, but for the general Riot that took place on the day laid in the Indictment

The Jury retired for a short time, and returned their Verdict in the first Case against all the seventeen Prisoners tried, Guilty In the second Case, namely, that against Pye and Armstrong, they returned their verdict—Not Guilty









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